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FULL COMMITTEE OR ANY OF ITS SUBCOMMITTEES!*

Final Report of the San Diego Charter Review Committee—Draft

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INTRODUCTION

On January 22, 2007, Mayor Jerry Sanders began the process which has produced this report when he called for the establishment of the San Diego Charter Review Committee. After 55 weeks of service as San Diego's first elected Chief Executive Officer since 1931, the Mayor had noted a number of problems in the City's historic shift away from the Council-Manager form of government. In the Mayor's Memorandum on "Establishment of a Charter Review Committee", he stated: "In the City's first year operating under Article XV: Strong Mayor Trial Form of Governance it has become apparent there are a number of areas where clarification and fine-tuning would help achieve the original intent of this reform." The Mayor pointed out that long-term implementation of Article XV was problematic because of its lack of clarity: "I believe that we can all agree roles and responsibilities are unclear, the business of the public is not optimally served, and that a fresh review of this Charter section is a timely priority."

In order to undertake the needed review of the Charter, the Mayor asked the City Council to assist in forming a Committee. Each member of the City Council recommended an individual to represent his or her district. When the Mayor asked for these nominations, he clearly stated his ideals for the composition of the Committee: "We are looking for individuals who can be independent, possess scholarly and operational subject matter expertise, those who have experience with previous charter reform efforts and who are broadly representative of our talented citizenry." Applying the Mayor's criteria, the Council nominated Committee members, the Mayor confirmed one nominee from each Council member, and added members "to round out the Committee ensuring a representative balance."

The San Diego Charter Review Committee was given a very clear set of responsibilities. The Mayor had asked four questions, defining the subject areas around which the Committee should build its workplan. The Committee made finding the answers to those four questions its Mission Statement: "To determine modifications necessary to implement the Kroll report recommendations and other financial reforms; to clarify the roles and responsibilities of elected officials and the separation of powers under the strong mayor form of governance; to identify modifications that would improve the functionality of the strong mayor form of governance during the trial period; and to identify legislative tightening that would be required for effective permanent implementation of the Strong Mayor form of governance." The Committee then established three Subcommittees with which to accomplish its mission.

The Subcommittee on Interim Strong Mayor would take on the issues of improving the functionality of the strong Mayor form of governance, and identifying legislative tightening required to implement it on a long-term basis. The Subcommittee on Financial Reform would address the recommendations made by the Kroll Report, as well other needed financial reforms. The Subcommittee on Duties of Elected Officials would handle the clarification of the roles and responsibilities and separation of powers under the strong Mayor form of governance. The Chair of the Committee requested that each of the Committee members identify which Subcommittee best fit their interests in the reform process. The division of labor necessary to allow the Committee to accomplish its mission proved easy to achieve, and each Committee member was assigned to the Subcommittee of his or her choice. The Subcommittees each voted to approve a workplan assembled by staff, and the full Committee approved all of them.

For nearly six months (from April 13 to October 4), the San Diego Charter Review Committee and its Subcommittees held 51 meetings, including public forums in every Council District, and meetings by both Subcommittees and full Committee in Balboa Park and City Hall. The public forums and full Committee meetings were all televised on City Channel, and then placed on the website for webcast. The research that the Committee and its Subcommittees have done has been handed out at all meetings, and placed on the website for wider distribution. During 25 weeks of meetings and forums, the Subcommittees and full Committee heard testimony from labor representatives, members of the business community, employees, administrators and elected officials of the City government, experts on urban governance, members of good government groups, and as many members of the wider public who were so civic-spirited as to participate. In terms of the experience of previous San Diego charter commissions, as well as charter commissions from other cities, the process was very open and inclusive. The full Committee and its Subcommittees voluntarily operated under the requirements of the Brown Act for posting its meetings, taking input from the public and holding all of its meetings and conducting its research and deliberations in full public view with citizen participation. The San Diego Charter Review Committee is grateful for all of the assistance that it received from public-spirited citizens and residents of this City.

SUMMARY OF CHARTER RECOMMENDATIONS

I. CHANGES PROPOSED FOR THE 2008 BALLOT

CATEGORY A – INTERIM STRONG MAYOR AND LEGISLATIVE TIGHTENING

1. Extends the trial period in Section 255 (Operative Date; Sunset of Article; Future Action by Voters) to December 31, 2014, at which point Article XV (Strong Mayor Trial Form of Governance) shall be made permanent, unless voters approve a ballot measure to extend, shorten or repeal the effective period of this Article.
2. Amends Section 285 (Enactment Over Veto) and Section 290 (Council Consideration of Salary Ordinance and Budget; Special Veto Power) to require a two-thirds Council majority vote to override a mayoral veto.
(AND)
Amends Section 285 (Enactment Over Veto) to require that if an ordinance or resolution requires a two-thirds Council majority to pass, then the Council would need to vote by a majority of two-thirds-plus-one-member in order to override a mayoral veto.
3. Amends Section 270 (The Council) to increase the number of Council districts from eight to eleven, with the redistricting to add the three additional districts to occur as soon as practicable.
4. Amends Section 270 (The Council) to clarify that Office of the Independent Budget Analyst is authorized under the Charter to act as a budgetary and policy analyst for the City Council.

CATEGORY B – FINANCIAL REFORM AND THE KROLL REPORT

5. Amends Section 39 (City Auditor and Comptroller) to indicate that the Chief Financial Officer shall assume the responsibilities of the City Auditor and Comptroller.
(AND)
Amends Section 45 (City Treasurer) to remove the need for Council confirmation of the City Treasurer.
6. Adds a new Section 39.1 (Audit Committee) to establish an Audit Committee consisting of five members composed of two members of the City Council, one of whom shall serve as Chair, and three members of the public. The public members shall be appointed by the City Council from a pool of candidates to be recommended by a screening committee comprised of the Chief Financial Officer, the Independent Budget Analyst, the City Attorney or his or her designee, a member of the City Council and two outside financial experts.
7. Adds a new Section 39.2 (City Auditor) to establish a City Auditor who shall be appointed by the City Manager in consultation with the Audit Committee and confirmed by the City Council. The City Auditor shall be a Certified Public Accountant or Certified Independent Auditor. The City Auditor shall serve for a term of ten (10) years and report to the Audit Committee. The Audit Committee with a four-fifths vote may terminate the City Auditor with a right

to appeal to the City Council who can override the Audit Committee's action with a two-thirds vote.

8. Recommends maintenance of the *status quo* in regard to the Board of Administration of the San Diego City Employees Retirement System. The recent Charter changes seem to be working well, despite recommendations by the Pension Reform Committee for a board very different in composition. *(Tentative; this has been recommended by the Subcommittee, but not yet deliberated by the full Committee.)*

CATEGORY C – DUTIES OF ELECTED OFFICIALS

9. Amend section 117 (Unclassified and Classified Services) to clarify that Police officers, fire fighters and lifeguards who participate in the Safety Retirement System are exempt from Managed Competition.
10. Amend Section 40 (City Attorney) to create professional qualifications for this Office, define the civil client as the municipal corporation of the City of San Diego, clarify authority over the control and settlement of litigation, and establish a process allowing a City entity to retain outside legal counsel (at the entity's own expense) when the City Attorney's Office may not provide legal advice due to an ethical or financial conflict of interest. *(Tentative; this has been recommended by the Subcommittee, but not yet deliberated by the full Committee.)*

II. CHANGES PROPOSED FOR A LATER BALLOT

11. Repeal Section 24.1 (Mayor's Salary) and amend Section 12.1 (Councilmanic Salaries), Section 40 (City Attorney) and Section 41.1 (Salary Setting Commission) to alter the salary setting process for all elected officials. Henceforth, the Salary Setting Commission shall include individuals with particular expertise, authorized to examine all appropriate factors and establish the salaries of the Mayor, City Attorney and Council. The Council must adopt the Salary Setting Commission's recommendations for salaries, and the Mayor may not veto them. The public will retain its referendum authority over the ordinance enacting these salaries.
12. Amend Section 265 (The Mayor) to allow the Mayor to submit nominees for consideration when controlling law vests the power to appoint City representatives to boards, commissions, committees and governmental agencies in the City Council or a City Official other than the Mayor.
13. Amend Section 265 (The Mayor) to allow the Mayor to appoint the Personnel Director, subject to Council confirmation, and to dismiss the Personnel Director without recourse.
14. Amends Section 265 (The Mayor) to authorize the Mayor to act as the Chief Executive Officer of any organization established by federal or state law for which the City Council acts as the governing or legislative body. In this capacity, the Mayor will supervise the administrative affairs of these organizations, and hold the same administrative and procedural power and authority that the Mayor has in conducting City affairs, including the power of veto. This would institutionalize the Mayor's present position as Executive

Director of the Redevelopment Agency. *(Tentative; this has been recommended by the Subcommittee, but not yet deliberated by the full Committee.)*

15. Adds a new Section 71.1 (Balanced Budget) to require that the City adopt a balanced budget and make mid-year course corrections to ensure that it is being implemented. At the end of the year, the City shall charge any deficit against the next year's operating budget. The City may not under-fund its Capital program to create the spurious appearance of a balanced budget. *(Tentative; the Subcommittee is deliberating the proposal, but the full Committee has not yet deliberated upon it.)*

I. PROPOSED CHARTER CHANGES FOR THE 2008 BALLOT

Based on all of the input received, the Subcommittees were able to research the many items in their workplans, deliberate on proposals for Charter revision, and forward their recommendations to the full Committee. The Subcommittees made their work available to other Committee members, presented their findings and recommendations before the Committee, and participated in the deliberations on their recommendations. Each of the recommendations below was passed by a majority vote on motions in both the relevant Subcommittee and the full Committee.

The Subcommittees attempted to maintain a division of labor, but an inevitable overlap occurred. For example, the issue of the Mayor's status in terms of redevelopment was handled by the Interim Strong Mayor Subcommittee, but concerns the Duties of Elected Officials. Likewise, the Financial Reform Subcommittee addressed the balanced budget issue, which required examination of the Duties of Elected Officials in adopting and implementing a balanced budget. The unintended overlap between the subject matters of various Subcommittees did not create any difficulties, and in fact served to improve the Committee's work product. Charter review is inherently a collective enterprise in that only the voters can change the City Charter. As democratic theory suggests, the more individuals participate, the better the quality of decisions made.

Because of the cross-cutting nature of the work of the various Subcommittees, and the fact that these recommendations differ in their time sensitivity, the Committee concluded that it was best to categorize its recommendations in terms of when they should be moved forward to the ballot. Because of the importance of assuring that the Strong Mayor Trial truly provides an idea of the improvement that this form of government may offer, the Committee felt that extending the Trial Period and fine-tuning it to allow a fair assessment of this governmental system was a critical need. Because of the recent fiscal woes of the City—as evidenced by the SEC monitoring and Consent Decree, and the Kroll Report's assessment of the City's failure to adequately fund its infrastructure and pension systems—the changes to deal with the issues raised by Kroll were also seen as an immediate priority. Lastly, some of the changes to clarify the duties of elected officials are included in this category because there is an immediate need for improvement.

Other recommendations that the Committee is making are also of great importance and should not be neglected, but the Committee felt the need to prioritize its recommendations for Charter change. In general, Category A amendments are those that emerged from the Interim Strong Mayor Subcommittee. By contrast, Category B recommendations have been made by the Subcommittee on Financial Reform. Finally, Category C proposals deal with the matters that the Subcommittee on Duties of Elected Officials identified during its work. However, as indicated above, there was some overlap between the work of the Subcommittees, and each will have made a significant contribution if the City follows up on its work. Refer to Appendix II for the exact language of all of the proposed Charter changes, as each was ratified by the Committee.

CATEGORY A – INTERIM STRONG MAYOR AND LEGISLATIVE TIGHTENING

1. Extends the trial period in Section 255 (Operative Date; Sunset of Article; Future Action by Voters) to December 31, 2014, at which point Article XV (Strong Mayor Trial Form of Governance) shall be made permanent, unless

voters approve a ballot measure to extend, shorten or repeal the effective period of this Article.

On November 2, 2004, the voters of the City of San Diego approved Proposition F, creating the Strong Mayor Trial Form of Governance. Proposition F established a trial period, which was to run from January 1, 2006 to December 31, 2010. Some of the proponents of the Charter change recommended here have pointed out that the trial period has proven the effectiveness of the Strong Mayor form. On the other hand, some opponents claimed that the voters were promised a five-year trial, and the trial period should be allowed to run its course before passing judgment on the success of the experiment.

During the Subcommittee's discussion of the Strong Mayor form of government, the debate touched on extending the trial period, repealing the trial period and making the change permanent, or requiring an election to be held automatically at some point before the trial period's expiration. There was a remarkable degree of consensus among the members of the Committee that the Strong Mayor form of governance had proven itself. Committee members noted that in the public forums held around the City, the citizens who spoke indicated how much better governed San Diego was under the new form of government. Many stated that the City might have avoided its recent woes if there had been a better leadership structure in place prior to the implementation of Proposition F. The Committee members pointed out that if the trial period was permitted to expire, then the City would face another costly and uncertain transition between forms of government. The Committee found there was a common misconception that under Proposition F, the trial period would automatically be extended, unless something had proven amiss with the Strong Mayor system during the trial. Based upon a full discussion at many Subcommittee and Committee meetings and public forums, the Committee voted to extend the trial period to the end of 2014, and then make the change permanent unless voters had acted to alter or terminate the trial period in the interim.

VOTE: AUGUST 9, 2007; 13 AFFIRMATIVE, 1 NEGATIVE, 1 ABSENT.

2. Amends Section 285 (Enactment Over Veto) and Section 290 (Council Consideration of Salary Ordinance and Budget; Special Veto Power) to require a two-thirds Council majority vote to override a mayoral veto.

(AND)

Amends Section 285 (Enactment Over Veto) to require that if an ordinance or resolution requires a two-thirds Council majority to pass, then the Council would need to vote by a majority of two-thirds-plus-one-member in order to override a mayoral veto.

As part of the Proposition F transition to the Strong Mayor Form of Government, Article XV is supposed to have created a Mayoral veto. However, the City Council may override the Mayor's veto by the exact same margin by which that body passed an ordinance or resolution in the first place. Some of those who advocate the Charter amendment proposed here have posited that the present process does not establish a true veto, but merely a requirement that the Council reconsider policies the Mayor finds objectionable. By contrast, those who oppose the veto and override process recommended above have stated that it would make it too difficult for the Council to pass legislation over Mayoral opposition.

The authors of Proposition F did not avoid creating a real veto because they favored a mere reconsideration, or feared an authentic veto and override process. Rather, they proposed a flawed veto process as a by-product of the fact that the Council was an even-numbered body. The hope was that separating the executive and legislative branches and creating checks and balances would bring about such an improvement that even a very imperfect veto provision would be better than the *status quo*. In point of fact, the committee that drafted Proposition F preferred the majority passage and super-majority veto override that is used by most Strong Mayor cities, 47 of the 50 United States, and our national government. However, the difficulty was establishing such a veto and override process when the legislature consists of eight legislators. The solution that Proposition F's advocates arrived at was to allow the Mayor to veto policies, but to then allow the Council to re-enact them by the same margins.

Although the vote on the Committee's recommendation was not unanimous, the membership as a whole did prefer that the City employ the standard super-majority override that is used by American governments at the local, state and national level. The only point of contention upon the Committee is the size of the supermajority required to override the Mayoral veto. The Committee's recommendation is for the two-thirds override that is the "gold standard" for such processes. There are provisions for three-fourths veto overrides in a number of cities, although the Committee would prefer that the City increase the size of Council members to allow a two-thirds veto override. However, two-thirds is not a "magic number" for vetoes, as the three-fourths model used in other cities attests. It is critical, however, that in order to establish the true veto that good government mandates, there be a larger number of legislators required to override it than the number that initially passed the legislation.

VOTE: AUGUST 9, 2007; 8 AFFIRMATIVE, 6 NEGATIVE, 1 ABSENT.

3. Amends Section 270 (The Council) to increase the number of Council districts from eight to eleven, with the redistricting to add the three additional districts to occur as soon as practicable.

The City Council has included the same number of members since 1963. This means that San Diego was less than half its present size when the City moved to an eight-member Council (616,500 population in 1963; over 1.3 million in 2007). The eight-member Council of today resulted from action taken by the 1962 Citizens Charter Review Committee, which recommended increasing the Council's size beyond the six members the Charter had mandated since 1931. That body reported that "something should be done to ease the burden of the Council" and the public indicated its assent by approving a Charter amendment. The 1962 Committee thought that "adding to the number of members of the Council" was critical because each Council member needed to serve a district of about 103,000 people. Presently, Council members must represent over 163,000 residents. Some of the proponents of the recommendation for an eleven-member Council favored such a change to allow each legislator to represent a more feasibly sized district, as well as to ensure that the veto override is closer to a two-thirds majority. The only opposition raised to this recommendation apparently rose from concerns that while increasing the size of the Council was a good idea, the Committee should not recommend a specific number of districts or should set a date certain by which the increase would occur.

There was general agreement that San Diego's Council faces a challenging task in attempting to represent districts that are so large. The Committee found during its research that most big United States and California cities do not require their local legislators to serve constituencies of such magnitude. In a city as diverse as San Diego, it would seem that smaller districts would allow Council members to be closer to the public. Some recommended that the Committee should create at-large Council members so as to ensure the possibility of a two-thirds veto override, but leave the number of Council districts at the *status quo*. However, the Committee heard consistent public testimony indicating that while residents were happy with their own Council member, they wished that City government was not so remote. Only by adding Council districts could San Diego guarantee an increase in the closeness of contact between its communities and their representatives. The Committee would have preferred to set a date for the needed redistricting, yet was advised by the City Attorney's representatives that such action raised legal issues in terms of the Voting Rights Act. The Committee did note, however, that based on the recent SANDAG figures the City's Council districts are presently at variance with the one person-one vote standard. The Committee wanted redistricting to occur as soon as practicable, not just because of the super-majority veto override, but because it would ease the task that Council members face in providing their communities with high-quality representation.

VOTE: AUGUST 9, 2007; 14 AFFIRMATIVE, 0 NEGATIVE, 1 ABSENT.

4. Amends Section 270 (The Council) to clarify that Office of the Independent Budget Analyst is authorized under the Charter to act as a budgetary and policy analyst for the City Council.

One of the gains yielded by the voters' passage of Proposition F was the creation of the Office of the Independent Budget Analyst (IBA). The IBA ensures that the City will benefit from the true checks-and-balances system that the Strong Mayor form of governance seeks to provide. The proponents of the above recommendation thought that the IBA needs to be authorized to provide the Council with analysis of legislative and policy issues, rather than merely budgetary matters. Some Committee members suggested that perhaps the IBA should be re-named the Council Legislative Analyst in the interest of accuracy, but the recommendation passed unanimously.

The IBA is analogous to the federal government's Congressional Budget Office (CBO). The CBO acts to give Congress independent information from the President's Office of Management and Budget. In order to fulfill its duties as a legislative body, the City Council needs the IBA to act as its version of the CBO. While it is true that the most important policy document a city publishes is its budget, not all policy analysis is budgetary in nature. The Committee members commended the City Council for specifying that the IBA was to handle legislative and policy analysis in its codification of that Office's responsibilities. However, the Committee would prefer not to leave such an important matter to the Municipal Code. The Committee's recommendation would institutionalize the actions of the present Council by clarifying in the Charter that the IBA shall be authorized to act as budgetary and policy analyst for the City's legislative body.

VOTE: SEPTEMBER 21, 2007; 14 AFFIRMATIVE, 0 NEGATIVE, 1 ABSENT.

CATEGORY B – FINANCIAL REFORM AND THE KROLL REPORT

5. Amends Section 39 (City Auditor and Comptroller) to indicate that the Chief Financial Officer shall assume the responsibilities of the City Auditor and Comptroller.

(AND)

Amends Section 45 (City Treasurer) to remove the need for Council confirmation of the City Treasurer.

In its examination of the City's recent financial woes, the Kroll Report "found the City's financial reporting structure deficient". The report singled out the Charter provisions on the City Auditor and Comptroller as especially problematic. In its outline of the remediation necessary to repair the City's financial structure, the Kroll Report turned first to the need to fix the City Auditor and Comptroller's office and to establish a Chief Financial Officer (CFO). The report noted that the City's previous misstatements of its financial position had resulted from the same factors that created the need for the Sarbanes-Oxley law for private corporations: namely, the failure by the organization to adequately separate the auditing function from other management-related functions. In San Diego, there were problems because, as Kroll noted, "the auditor audits his own work." In examining the duties of the City Auditor and Comptroller, as they appear throughout the Charter, it is clear that this officer is a Comptroller rather than an Auditor. Only one Charter section deals with the auditing functions of this Officer, and that section concerns the retention of the City's outside auditors. The recommendation is to re-name the City Auditor and Comptroller the CFO; other recommendations offered below would transfer the auditing responsibilities to a separate officer and its oversight committee. The Committee supported the recommendation unanimously, and no one who addressed the Subcommittee or Committee raised any concerns about it.

The second part of the recommendation alters the appointment process for the City Treasurer. The City Treasurer reports to the CFO (City Auditor and Comptroller) in disbursing City moneys to honor the CFO's warrant or check-warrant. The Kroll Report recommended that the City clarify the reporting relationship that exists between the CFO and the City Treasurer. To require that the Council confirm the CFO, and then confirm another officer who acts as the CFO's subordinate, does not make sense and clouds accountability. To establish ambiguous reporting relationships and provide subordinate officers with independent power bases is a recipe for trouble. Only with clear lines of responsibility is it possible to fairly assess performance, and place credit and blame appropriately. The Committee supported this recommendation unanimously, and again, did not receive any concerns about it.

VOTE: SEPTEMBER 21, 2007; 13 AFFIRMATIVE, 0 NEGATIVE, 2 ABSENT.

6. Adds a new Section 39.1 (Audit Committee) to establish an Audit Committee consisting of five members composed of two members of the City Council, one of whom shall serve as Chair, and three members of the public. The public members shall be appointed by the City Council from a pool of candidates to be recommended by a screening committee comprised of the Chief Financial Officer, the Independent Budget Analyst, the City Attorney or his or her designee, a member of the City Council and two outside financial experts.

The absence of an Audit Committee was another structural deficiency that the Kroll Report emphasized. Kroll recommended that the City establish an Audit Committee, consisting primarily of individuals with expertise in accounting, auditing and financial reporting. This would provide the City with needed oversight of its fiscal affairs. The City was unable to follow the Kroll recommendations in this regard because of conflict with the City's Charter provisions regarding the delegation of legislative responsibility. Consequently, the City Council created an Audit Committee, which has already begun to yield benefits in the form of increased transparency. Yet the San Diego Charter Review Committee would prefer to follow the Kroll model more fully, because the majority on the Audit Committee it contemplated would be comprised of financial experts. The Council may or may not at any given time have a sufficient number of members qualified to serve on its Audit Committee. The recommendation above would institutionalize an Audit Committee, rather than leaving it up to the Council to continue this oversight role, and ensure that the majority of Audit Committee members possess the requisite qualifications to perform the needed monitoring. There was broad consensus favoring this recommendation by both the Subcommittee and the full Committee. The only opposition appears to have centered on the issue of accountability; one Committee member thought that the Council's Audit Committee should continue to provide oversight of auditing. If the Council did not place members with adequate expertise on the Audit Committee, then they could be held accountable by voters. The City Attorney has opined that the creation of an Audit Committee which includes anyone other than Council members would require Charter change.

It is imperative that the City seriously consider any responsible measure that could prevent the kind of national publicity that San Diego received for its financial woes of the recent past. The City might never have experienced the assignment of an SEC monitor, failure to release accurate CAFR's, and under-funding of its infrastructure and pension systems, if its Charter had created a proper financial structure. The Committee heard no testimony favoring a return to the financial practices of the past. This recommendation would institutionalize the hard lessons that have been learned. The Subcommittee and full Committee also voted to recommend Municipal Code language delineating the workings of the Audit Committee. That vote for codification was included in the motion for adoption of the recommendation above. The language recommended for codification of the Audit Committee's operations appears elsewhere in this Report.

VOTE: SEPTEMBER 21, 2007; 12 AFFIRMATIVE, 1 NEGATIVE, 2 ABSENT.

7. Adds a new Section 39.2 (City Auditor) to establish a City Auditor who shall be appointed by the City Manager in consultation with the Audit Committee and confirmed by the City Council. The City Auditor shall be a Certified Public Accountant or Certified Independent Auditor. The City Auditor shall serve for a term of ten (10) years and report to the Audit Committee. The Audit Committee with a four-fifths vote may terminate the City Auditor for cause with a right to appeal to the City Council who can override the Audit Committee's action with a two-thirds vote.

Yet another major remedy offered by the Kroll Report was the creation of an independent auditor, serving in a ten-year term with removal by the Audit Committee for cause or by a supermajority of the City Council. The recommendation follows the Kroll model in most respects. Kroll called the officer the Independent Auditor General, but the Committee found in its research that both Auditor General

and Internal Auditor are terms of art, and must be used carefully. The Committee preferred the title City Auditor, with the basic guarantees of independence that the Kroll Report favored. One small change is that rather than allowing a two-thirds majority of the Council to remove the City Auditor, the Committee favored clarity in reporting relationships. The Audit Committee may remove the officer for cause by a four-fifths vote, but the Council may override the Audit Committee by a two-thirds vote. The Council can prevent the City Auditor from being wrongly terminated, but may not terminate that officer on its own without cause, as the Kroll model would allow. Some proponents favored the recommendation because they contended that the appointment process, long term and for-cause standard for dismissal would ensure the independence of the City Auditor. Some opposed the recommendation because they thought that the only way to grant the City Auditor complete independence would be to make the office elective.

Both those members of the Committee that favored the recommendation and those that opposed it thought that the City should have a City Auditor. Both groups wanted this officer to possess the authority to perform the kind of thorough-going state-of-the-art audits that the Committee has recommended for codification (The proposed Municipal Code language, which was recommended in the same motion as the Charter language, appears elsewhere in this Report.) Both saw a proper application of the principles of auditing as an improvement that would prevent the City from repeating the financial mistakes of the past. The only disagreement was over what method would best achieve auditor independence. Those who favored election claimed that election would ensure that the City Auditor would be independent in both fact and appearance. Those who favored the Committee recommendation held that appointment would assure the competence of the auditor and that therefore the recommendation above would secure both the independence and the expertise that San Diego needs in its City Auditor.

VOTE: SEPTEMBER 21, 2007; 7 AFFIRMATIVE, 6 NEGATIVE, 2 ABSENT.

8. Recommends maintenance of the *status quo* in regard to the Board of Administration of the San Diego City Employees Retirement System. The recent Charter changes seem to be working well, despite recommendations by the Pension Reform Committee for a board very different in composition. (*Tentative; this has been recommended by the Subcommittee, but not yet deliberated by the full Committee.*)

The failure to adequately fund SDCERS was one of the most important items investigated by the Kroll Report. Indeed, this item alone has created the greatest jeopardy for the City's financial future. In 2004, the City began to address this issue when the voters ratified Propositions G and H. The Subcommittee examined the results of these two Charter amendments, and found that great improvement had already been made. Therefore, the Subcommittee has forwarded to the full Committee a recommendation to retain the status quo in terms of the composition of the SDCERS Board of Administration. The reforms seem to be working at this point, and thus perhaps it would not be appropriate to attempt to alter the board's composition in the way recommended by the Pension Reform Committee. The full Committee will act upon this recommendation at its deliberations meeting on September 27, 2007.

VOTE: SEPTEMBER 27, 2007; X AFFIRMATIVE, Y NEGATIVE, Z ABSENT.

CATEGORY C – DUTIES OF ELECTED OFFICIALS

9. Amend section 117 (Unclassified and Classified Services) to clarify that Police officers, fire fighters and lifeguards who participate in the Safety Retirement System are exempt from Managed Competition.

In 2006, the voters ratified Proposition C, which authorized the City to use Managed Competition to increase the efficiency of its service provision. The initiative was not supposed to have subjected the services provided by the City's public safety workers to outsourcing. However, it appears that the language of the Charter amendment as it came before the voters did not take account of the language of the Charter sections establishing the Police and Fire Departments (sections 57 and 58). Consequently, the voters inadvertently authorized Managed Competition for these departments. The Mayor and Council have acted by resolution to clarify the intent of Proposition C, yet the offending language remains in the Charter.

The proponents of the above recommendation wanted to assure that the voters' intent was secured. Some worried that unless corrective language is carefully crafted, the City's existing partnership with Rural/Metro in the San Diego Medical Services Enterprise L.L.C. would be negatively affected. Others raised concerns as to whether the City might accidentally prevent itself from providing services to areas outside the City through "Lakewood Plan" contracts. The above recommendation addresses these concerns by specifying that those who participate in the Safety Retirement System will not have their employment privatized. The Committee consensus on the need for this Charter amendment is evidenced by its unanimity in making the recommendation.

VOTE: SEPTEMBER 6, 2007; 14 AFFIRMATIVE, 0 NEGATIVE, 1 ABSENT.

10. Amend Section 40 (City Attorney) to create professional qualifications for this Office, define the civil client as the municipal corporation of the City of San Diego, clarify authority over the control and settlement of litigation, and establish a process allowing a City entity to retain outside legal counsel (at the entity's own expense) when the City Attorney's Office may not provide legal advice due to an ethical or financial conflict of interest. *(Tentative; this has been recommended by the Subcommittee, but not yet deliberated by the full Committee.)*

The Subcommittee examined Charter section 40 in great detail. The staff performed research on the history of the City Attorney's Office, provided a comparative examination of the way in which City Attorneys are selected and operate in major United States and California cities, and conducted an exhaustive literature review on the issues associated with section 40. The Subcommittee voted to create professional qualifications for those elected to the Office of City Attorney, to define the civil client as the municipal corporation of the City of San Diego, to clarify control and settlement of litigation, and to establish a process whereby a City entity may request outside legal counsel if the entity can demonstrate that the City Attorney has an ethical or financial conflict of interest in providing it with legal advice. The retention of any such counsel would continue to be deducted from that entity's budget. The full Committee will act upon this recommendation at its deliberations meeting on September 27, 2007.

VOTE: SEPTEMBER 27, 2007; X AFFIRMATIVE, Y NEGATIVE, Z ABSENT.

II. PROPOSED CHARTER CHANGES FOR A LATER BALLOT

The Committee also identified a number of other Charter changes that were needed. However, unlike the amendments the Committee has recommended for the 2008 ballot, these items could be handled at a later time. They are not needed as urgently as the Charter amendments in Category A, B and C. All three Subcommittees forwarded to the Committee some of the Charter changes recommended for a later ballot. The Subcommittee on Financial Reform recommended the Balanced Budget amendment. The Interim Strong Mayor Subcommittee proposed the Redevelopment Agency amendment. The Subcommittee on Duties of Elected Officials forwarded all of the other Charter changes to the full Committee. The full Committee approved all of these amendments except one by majority vote. The Committee divided evenly on whether to approve the Charter amendment regarding the appointment and removal of the Personnel Director. Refer to Appendix II for the exact language of all of the proposed Charter changes, as each was ratified by the Committee.

11. Repeal Section 24.1 (Mayor's Salary) and amend Section 12.1 (Councilmanic Salaries), Section 40 (City Attorney) and Section 41.1 (Salary Setting Commission) to alter the salary setting process for all elected officials. Henceforth, the Salary Setting Commission shall include individuals with particular expertise, authorized to examine all appropriate factors and establish the salaries of the Mayor, City Attorney and Council. The Council must adopt the Salary Setting Commission's recommendations for salaries, and the Mayor may not veto them. The public will retain its referenda authority over the ordinance enacting these salaries.

The City's Salary Setting Commission (SSC) has done a good job in recommending appropriate salaries for the Mayor and Council members. The only problem with the current process is that it requires the Mayor and Council to vote upon their salaries. This has placed elected officers in a difficult position, where they always appear to be acting from narrow self-interest. Consequently, they do not act to raise their salaries, even when an objective body has indicated the need to do so. As a result, these salaries are now set at such a level that unless they are able to support themselves from independent means (such as retirement pensions or their own investments), good potential candidates might hesitate to seek City office. This does more than injure the short-run financial standing of the individuals elected to City government. It threatens the City's long-run interests, because San Diego's ability to continue attracting quality candidates to elective offices may depend upon establishing salaries that would allow these candidates to live in the City.

The full Committee recommended this change because it would retain the best features of the present process, maintaining the right of voters to use the referendum if they think City officers' salaries should not be increased. Yet the recommended language would remove the politics from the process, allowing an independent body to decide upon their compensation. The recommendation would also include establishing compensation for the City Attorney within the SSC's purview. The Subcommittee debated a great deal on whether to recommend that the SSC examine any particular indices. The Subcommittee and Committee decided in the end that since the City was delegating this decision to a non-legislative body, it would be appropriate to offer guidance. The SSC presently considers the very indices included in the Charter amendment proposal in making its recommendations for Mayor and Council salaries.

The majority of Committee members favored this recommendation, but there was no clear consensus. Those members who opposed it did indicate they were not doing so because they thought the City's elected officials were over-compensated. Their main objection was that the Council should be making this recommendation, because its members are already aware of the need for this Charter amendment. The other objection raised was that this matter was beyond the scope of the tasks assigned to the Committee. The full Committee voted to recommend the Charter change, despite these issues.

VOTE: SEPTEMBER 6, 2007; 8 AFFIRMATIVE, 6 NEGATIVE, 1 ABSENT.

12. Amend Section 265 (The Mayor) to allow the Mayor to submit nominees for consideration when controlling law vests the power to appoint City representatives to boards, commissions, committees and governmental agencies in the City Council or a City Official other than the Mayor.

One of the unintended consequences of the passage of Proposition F was the removal from the Mayor of any role in appointing the City's representatives to outside organizations. For example, state law grants the City Council power to select the City's representatives to the San Diego Unified Port District. When the Mayor was a member of the Council, he or she might participate in such important decisions. The Subcommittee initially favored adoption of language establishing an appointment process that granted the Mayor sole authority to nominate individuals for these kinds of agencies, with the Council appointing them to office. This would have been used for appointing City representatives to all bodies for which state or federal law gives appointing authority to someone other than the Mayor. This change would ensure that San Diego follows the federal model of executive nomination and legislative confirmation more faithfully. However, the representatives of the City Attorney's Office counseled that it is unclear whether state law would permit the City to create such a nominations process.

Even though there is no case law directly on point, the Subcommittee did not want to recommend Charter language that might not withstand a court challenge. Therefore the Subcommittee forwarded and the full Committee unanimously recommended the above Charter change. This recommendation resembles the process that the Council used under Council Policy 13, and that the Mayor and Council recently employed in selecting City representatives to outside organizations in cases where it is presently unclear who holds appointing authority (e.g., SANDAG bodies). This change would still provide much needed improvement in that it would clarify some of the appointments that are presently ambiguous, and allow the Mayor to participate in the appointment process for these important agencies. To deny the only policy-maker who is elected by the whole City any role in the appointment of representatives to agencies as significant as the Port District was clearly not the voters' intent in ratifying Proposition F. This change would help to restore the public's intent in voting for the Strong Mayor system and its federal model of separation of powers.

VOTE: SEPTEMBER 6, 2007; 14 AFFIRMATIVE, 0 NEGATIVE, 1 ABSENT.

13. Amend Section 265 (The Mayor) to allow the Mayor to appoint the Personnel Director, subject to Council confirmation, and to dismiss the Personnel Director without recourse.

The Subcommittee's members wondered why the City used its present method in selecting its Personnel Director, because this model is at such variance with the way that private organizations select this officer. Therefore, staff conducted extensive research into the issue of how other cities appoint their Personnel Director. The research indicated that Mayoral appointment of this officer is a time-tested concept, and is fairly common among Strong Mayor cities. The proponents of the recommendation pointed out that the Personnel Director is an anomaly in that it is the only officer appointed by a City commission (Civil Service). The City lacks an elegant governmental system because of all of the *ad hoc* deviations that its Charter creates in variance from a clear governance system. Opponents contended that the Personnel Director in a city is not directly analogous to a private corporation, and that this is a matter of civil service. They further posited that the Personnel Director is appointed in this manner to provide City employees with a sympathetic forum when they have a grievance.

The proponents of the recommendation pointed out that although the Personnel Director works as the Secretary of the Civil Service Commission, that Commission recommends to the City Council the rules for Civil Service. It is the Commission that monitors the civil service system, with assistance from the Personnel Director. Those who advocated the recommendation above believed that the proposed language would clarify that the executive branch of the City is under the control of the Mayor as the Chief Executive Officer, rather than diffusing responsibility and clouding accountability, as the Charter does at present. Those who objected to the recommendation argued that the system has worked satisfactorily for the past three decades, and that this action would be tantamount to "if it ain't broke, break it." The lack of a consensus upon the Committee is indicated by the seven-seven split that its vote on the matter produced.

VOTE: SEPTEMBER 26, 2007; 7 AFFIRMATIVE, 7 NEGATIVE, 1 ABSENT.

14. Amends Section 265 (The Mayor) to authorize the Mayor to act as the Chief Executive Officer of any organization established by federal or state law for which the City Council acts as the governing or legislative body. In this capacity, the Mayor will supervise the administrative affairs of these organizations, and hold the same administrative and procedural power and authority that the Mayor has in conducting City affairs, including the power of veto. This would institutionalize the Mayor's present position as Executive Director of the Redevelopment Agency. *(Tentative; this has been recommended by the Subcommittee, but not yet deliberated by the full Committee.)*

When San Diego voters ratified Proposition F, they inadvertently removed the Mayor from the City's redevelopment process. Since the Mayor was only allowed to preside over the City Council in closed session meetings, and could not vote with that body, the Mayor could not act as part of the Redevelopment Agency (RA). However, Prop F did provide that the City Manager would be the Mayor's subordinate. In addition, Prop F placed most City staff in the executive branch of City government, and thus under the Mayor as CEO. The executive branch includes those working for the RA, and therefore they are under control of the CEO-Mayor.

During the Prop F transition, the City Council wrestled with the prospect that the RA's Executive Director and its City staff would report to the Mayor rather than to the City

Council acting as RA.¹ The solution they adopted was to designate the Mayor as the RA's Executive Director. This was permitted because the RA's bylaws allowed the designation of someone other than the City Manager as Executive Director. Naming the Mayor to this position prevented creation of an ambiguous, dual reporting situation for both the City Manager and any City staff loaned out, contracted or partly employed by the RA. The Subcommittee has expressed interest in institutionalizing the City's current solution to the issue of how to incorporate both the Mayor and the City Council in the redevelopment process. The full Committee will act upon this recommendation at its deliberations meeting on September 27, 2007.

VOTE: SEPTEMBER 27, 2007; X AFFIRMATIVE, Y NEGATIVE, Z ABSENT.

15. Adds a new Section 71.1 (Balanced Budget) to require that the City adopt a balanced budget and make mid-year course corrections to ensure that it is being implemented. At the end of the year, the City shall charge any deficit against the next year's operating budget. The City may not underfund its Capital program to create the spurious appearance of a balanced budget. *(Tentative; the Subcommittee is deliberating the proposal, but the full Committee has not yet deliberated upon it.)*

There are many Charter sections that address the issue of balancing the budget, but none that establishes an explicit policy and provides a clear mechanism to enforce it. This may be yet another reason for the City's recent financial woes. The proposed Charter language will remove the ambiguity on this score from the present Charter, which even inaccurately refers to balanced budget mechanisms that are absent. Refer, for example to Proposition F's Section 290(b)(2)(B), which mentions "the balanced budget requirements set forth in section 71" and then try to find any such requirements in that section. Unfortunately, there is not a single word regarding a balanced budget in Charter section 71. The Charter sections that do refer to a balanced budget do so weakly, incorrectly or only by implication: 39, 68, 69, 70, 74, 75, 80, 92, 99 and 290(b)(2)(B). The requirement for a balanced budget needs to be express rather than implicit, and enforced rather than treated as a mere guideline. The full Committee will act upon this recommendation at its deliberations meeting on September 27, 2007.

VOTE: SEPTEMBER 27, 2007; X AFFIRMATIVE, Y NEGATIVE, Z ABSENT.

¹ See the August 2, 2005 Chairperson's Report to the City Council Strong Mayor-Strong Council Transition Committee on the Legal Effect of Proposition F on the City of San Diego Redevelopment Agency for a discussion of the Council's engagement with this issue.

III. SUMMARY OF MUNICIPAL CODE CHANGES FOR 2008 OR LATER

16. The Committee has recommended language for the Municipal Code to establish the operations of the Audit Committee. If the voters pass the Audit Committee Charter Amendment recommended by this Charter Review Committee, then the Committee has recommended language to codify the operations of the Audit Committee.

The Committee made this recommendation in conjunction with the Charter amendment to establish an Audit Committee. The Subcommittee had originally recommended this language be placed in the Charter because its members thought that it was important to ensure that the Audit Committee worked well to protect the City. However, the full Committee persuaded the Subcommittee that it was preferable to establish the Audit Committee through a Charter amendment, and then provide for its operations through the Municipal Code. The Charter amendment empowers the Audit Committee to act in the ways that the Municipal Code language would recommend. The Subcommittee agreed with the full Committee, separated its original recommendation into Charter and Municipal Code language, and forwarded its recommendations to the Committee for deliberations. The Committee ratified both the Charter amendment and Municipal Code language with the same motion. The members of the Committee regarded the specific codification the Subcommittee recommended as non-controversial and expressed general approval of the proposed language. Should the public ratify the Audit Committee amendment, the Committee would recommend adoption of its proposed Municipal Code language.

VOTE: SEPTEMBER 21, 2007; 12 AFFIRMATIVE, 1 NEGATIVE, 2 ABSENT.

17. The Committee has recommended language for the Municipal Code to determine the types of auditing that the City Auditor should include in the Audit Plan. These include management audits, performance audits, and audits of the economy and efficiency of City operations.

The Committee has recommended language for the Municipal Code to determine the types of auditing that the City Auditor should include in the Audit Plan. Once again, the Subcommittee had initially thought these details were so important that members placed them right in their proposal for Charter change. However, the Subcommittee recognized later that the Charter should not be an operations manual, but a statement of the principles of governance. Consequently, the Subcommittee recommended moving the specifics into the Municipal Code. The proposed language represents the latest advancements in auditing, and would authorize management audits, performance audits, and a number of different audits to increase the economy and efficiency of the City's service delivery. If the voters pass the City Auditor Charter Amendment recommended by this Charter Review Committee, then the Committee has recommended language to codify the operations of the City Auditor. The full Committee generally approved the recommended Municipal Code. The only disagreement was on the separate issue of who should perform these audits, an elected or an appointed officer.

VOTE: SEPTEMBER 21, 2007; 7 AFFIRMATIVE, 6 NEGATIVE, 2 ABSENT.

18. The Committee has recommended language for the Municipal Code to establish a process by which a City entity may seek to retain outside legal counsel when there is a disagreement with the City Attorney's Office over

whether that office faces an ethical or professional conflict of interest in providing that entity with legal advice. *(Tentative: the Subcommittee has approved the language, but the full Committee's deliberations are forthcoming.)*

This recommendation would create a process to be used in case the City Attorney's Office disagrees with a request by a City entity for outside legal counsel, but only under certain conditions. This specific process could only be used in the event that the City entity perceives a financial or ethical conflict of interest in relying upon the City Attorney's Office for legal advice. This process would flesh out the recommended Charter amendment that modifies the provisions of Section 40. If the voters were to approve that amendment, this Municipal Code language would be appropriate. The full Committee will act upon this recommendation at its deliberations meeting on September 27, 2007.

VOTE: SEPTEMBER 27, 2007; X AFFIRMATIVE, Y NEGATIVE, Z ABSENT.

19. The Committee has recommended language for the Municipal Code to assure that the City complies with the balanced budget requirement. Rather than achieving a superficial adherence with the letter of the law, the Committee would prefer authentic compliance, including the avoidance of the shifting of funds from capital expenditures to operating costs. *(Tentative: the Subcommittee is drafting this language, and it has not been approved by the full Committee.)*

The Subcommittee requested and assimilated a great deal of research on the balanced budget. Its members were surprised that the Charter does not clearly require that the City balance its budget. If the voters pass the Balanced Budget Charter amendment offered by this Charter Review Committee, then the Committee has recommended language codifying the City's intent to ensure the reality rather than merely the appearance of a balanced budget is achieved. The full Committee will act upon this recommendation at its deliberations meeting on September 27, 2007.

VOTE: SEPTEMBER 27, 2007; X AFFIRMATIVE, Y NEGATIVE, Z ABSENT.

IV. SUMMARY OF ITEMS RESEARCHED, BUT NEEDING FURTHER STUDY BY A FUTURE CHARTER COMMITTEE

20. Appointment of City Attorney

The Subcommittee on Duties of Elected Officials considered the issue of whether San Diego's City Attorney should be elected or appointed. This issue has come up for consideration by every Charter commission the City has formed since its decision to elect the City Attorney under the provisions of the 1931 Charter. This is an issue worthy of study, given that most major cities in the United States appoint their Corporation Counsel. Even though both Los Angeles and San Diego elect their City Attorneys, this is not common practice even in California. Only 11 of the state's 468 cities elect a person to act as City Attorney. In the final analysis, the Subcommittee felt that this was a matter better left to study by a future charter committee.

21. Automatic Charter Review

The Subcommittee on Interim Strong Mayor debated the issue of whether to recommend that the Charter should be amended to require an automatic review of the City Charter on a periodic basis. A number of cities around the country (e.g., Portland, Oregon and others) have decided to establish an automatic charter review process, under which a committee is formed at regular intervals to examine the city's organic document. This process creates a mechanism for handling mundane matters, such as the removal of obsolete details from the charter, or dealing with major issues that may arise in a city. Of course, nothing can be done by a charter review committee without voter approval. The Subcommittee decided that more study should be done, into such issues as whether the committee would be appointed or elected, if it is to be appointed, then by whom, the funding mechanism to allow a serious review, etc. Seeing all of the decisions that would need to be made as to the details, the Subcommittee opted to place this matter with others for which further study is recommended.

22. Budgetary Authority

The City Charter is at present unclear on the matter of mid-year course corrections to the budget. Many city charters establish a clear process for the handling of intra- and inter-departmental transfers. The City has had to deal with the ambiguity of the Charter on an *ad hoc* basis, making adjustments in whatever way can secure compromise between the parties involved in budget implementation. The Subcommittee on Duties of Elected Officials was interested in this area, and conducted research regarding this matter, but thought that it would ultimately lack the time necessary to give this subject a full hearing. The Subcommittee recommended that this matter be submitted to the full Committee for inclusion in the list of items needing further study by another charter committee.

23. City Investment Policies

The Subcommittee on Financial Reform performed a good deal of analysis on this item, noting that such cities as New York City and San Francisco have established reserve requirements in their charters. By establishing a "rainy day fund", some cities have worked to ensure that their municipal finances are much more secure against the vicissitudes of the marketplace. The Subcommittee thought that this kind of innovation might well serve San Diego in the future. However, the decision

as to how to implement the policy, and what specific percentage of City revenues should be set aside as reserves, were matters that the Subcommittee and full Committee would need a great deal more time to address. Consequently, the Subcommittee voted to ask the full Committee to include this item among those for which further study would be necessary and proper.

24. Filling Vacancies

The Subcommittee on Duties of Elected Officials looked into the matter of filling vacancies in City offices. Recent events in San Diego created a situation where the City was compelled to hold elections during the public's observance of holidays, and certain City officials were unable to continue acting in their official capacities so that a successor could be selected. The City Council requested that the San Diego Charter Review Committee examine the portions of the Charter that dealt with the filling of vacancies in the positions of Mayor and Council member. The Subcommittee examined the pertinent sections, perused the charters of other cities for better processes, but thought that this would require further study. Representatives of the City Attorney's office argued that this was best handled by adjustments to the Municipal Code, and stated that this was a case where the dictum of "if it ain't broke, don't fix it" should be applied. Since the Subcommittee did not think sufficient time was available to decide whether this part of the Charter is broken, much less how to fix it, its members concluded that it was better left to a future charter review committee.

25. Independent Budget Analyst's Status

The Subcommittee on Interim Strong Mayor did recommend changes to the IBA's office to clarify that it should provide policy analysis, but also examined the IBA's scope and duties in a broader sense. During the Subcommittee's work, a question arose as to what would happen if the Proposition F trial were permitted to expire. Of course, since the IBA's Office is included in Article XV, then the Charter status of that office would also cease to exist at the sunset of the trial period. The members of the Subcommittee were very impressed by the IBA's work in conjunction with the Committee, as well as in the City in general. The Subcommittee heard some testimony that the IBA's Office should exist regardless of whether the City were to go back to Council-Manager government. There was also testimony to the effect that if the Council-Manager form returned to effect, then there would be no need for an IBA. Under the Council-Manager form of governance, the City Manager is supposed to provide the Council with budgetary and policy analysis. The Subcommittee felt that this area was important, but one that its members would not have time to fully discuss. Therefore, this issue was placed in the "further study needed" category.

26. Integration of Strong Mayor Concept into City Charter

The Subcommittee on Interim Strong Mayor thought that appending Article XV at the end of the Charter was problematic because it amends sections throughout the document. If a future charter committee were to perform a thoroughgoing analysis of the City's basic law, then it might be preferable if the various components of the Strong Mayor form of government were moved to the relevant portions of the Charter. If the language regarding Mayor, Council, the executive branch, the budget and other matters occupied the place in the Charter they ought, perhaps the document would not be so confusing. Under California law, the Charter acts to protect the public from actions by their City officials that would otherwise be

permissible. To the degree that a Charter is clear, the public is protected, and the rules allow the public to hold their elected and appointed officials accountable for their actions. If a Charter is not crystal-clear, the public is not protected and the lines of responsibility allow blame-shifting behavior. It is no coincidence that Orange County, whose 1994 bankruptcy set a national record, was the only populous California county without a charter. The actions of Orange County's officials occurred under the general-law structure that counties without a home rule charter employ. The Subcommittee realized that it would be better if the intent of Article XV were integrated into the Charter, but that this is a matter that requires further study by a future committee.

27. Intergovernmental Relations

The Subcommittee on Interim Strong Mayor conducted research into the issue of whether the Charter should spell out a process for handling intergovernmental relations. The Subcommittee found in its research that intergovernmental relations has been something of a political hot potato, passed between different officials and agencies. Some city charters regard intergovernmental relations as the City's "foreign policy" and accordingly specify a mechanism for establishing the City's official policy. Who should advocate for the City when it is affected by the decisions of other levels of government, and the branches thereof? Who should decide whether the City files an *amicus* brief in an important case? The present Charter does not answer these questions definitively. The Subcommittee thought that this area was significant, but that it would need more study than the Committee could at present accord. Therefore, it requests that a future committee study it more fully.

28. Mayor's Role in Closed Session

One of the by-products of the transformation wrought by Proposition F was the process through which the City handles closed session meetings. Article XV provides that when the Mayor attends these meetings, the Mayor acts as presiding officer, but exercises no vote. When the Mayor was removed from the Council, this created an anomalous situation for handling the kinds of things that are done in closed session. There are closed session matters at which the City would want the Mayor to be present, such as when handling important litigation or establishing strategy for negotiations with companies. The authors of Proposition F wanted the Mayor to be a part of these closed session meetings, but did not want to cloud the executive-legislative separation by having the Mayor exercise a vote. Given the importance of the issues that arise in closed session meetings, the Subcommittee thought that this subject was worthy of study, but believed that a body with more time to do so could better assess the need for improvements in this area.

29. Possibility of Opting into CalPERS

The Subcommittee on Financial Reform wanted to provide a full review of the remediations suggested in the Kroll Report. Of course, that report painted a picture of the City's pension funding schemes that was disturbing, to say the least. What if the City were to remove the proverbial cookie jar from reach by opting into the CalPERS retirement system? CalPERS is the largest public pension system in the world. CalPERS was so well managed that even during the 2001 downturn that accompanied skepticism with the real value behind "new economy" stocks, its assets were intact. The SDCERS portfolio appears upon first inspection not to have performed as well. The Subcommittee heard testimony from the asset managers

and legal counsel at SDCERS, from the public employee unions who rely upon its solvency for their present and future retirements, and did its own research as well. The staff examined the public pension systems for the largest cities in the state and nation, and provided comparative (although dated) data upon these systems. The Subcommittee was impressed by the current performance of the leadership at SDCERS, and felt that a full investigation of this matter should await a further committee's efforts. The Subcommittee also recognized that the Charter presently provides a process under which the City could make such a move if desired, and felt comfortable with this decision to defer to others.

30. Timing of Budget Process

The Subcommittee on Interim Strong Mayor included the timing of the budget process in its initial workplan. It seemed that some of the hard deadlines that the Charter establishes for the budget are very difficult to meet. The Charter specifies clear dates, such as February 15 (for the Salary Setting Commission to submit its recommendations for Council salaries to the Council), or April 1 (for certain departments to transmit their annual budget estimates to the Manager), or June 15 (the date by which the Council must hold two public budget hearings). Whether these deadlines are entirely practicable was an issue that the Subcommittee originally intended to address. Yet the number of individual deadlines, and the interaction between them, was an item that would have taken a great deal of time to understand, much less recommend improvements. The Subcommittee decided that this deserves more time than the Committee has, and that a future charter review committee may find this issue worthy of consideration.

APPENDIX ONE

LIST OF SPEAKERS WHO ADDRESSED THE COMMITTEE

This list includes the speakers who addressed the Committee in its meetings and those of its Subcommittees, as well as Public Forums held in each Council District. Because many of these individuals spoke at multiple events, and gave the Committee input on many separate items, it was not feasible to include all of that information here. However, the comments of these speakers, and the dates on which they spoke, appear in the Committee and Subcommittee Minutes, and the webcasts of the Committee and Public Forum, all of which are available on the Committee's website.

The members of the public are listed in alphabetical rather than chronological order. Although the Committee is aware that some of the individuals listed below have affiliations, such as with good government groups, their affiliation is only listed if they specifically indicated it in their speakers' cards. Often, City residents who are members of particular groups are very careful to distinguish their personal opinions from those of the groups with whom they are affiliated. The Committee respected these considerations, and thus only listed affiliations when the speaker indicated in the speaker card that he or she was speaking as a representative of a group.

Scott Alevy, San Diego Regional Chamber of Commerce
Ernestine Bahn
Andy Berg, San Diego Regional Chamber of Commerce
Kathleen Blavatt
Donn Bleau
Beverly J. Boys
Cory Briggs, League of Women Voters
Jeaanne Brown
Joyce Brown
Cole Cannon
Cathy O'Leary Carey
Carol Changes
Dwayne Crenshaw
Georgia Crowne
Norma Damashek
Carl DeMaio, The Performance Institute
Amy Denhart
Jess Durfee
Jill Elsner
Wayne English
Beryl Flom
Donna Frye
Edwina Goddard
Lorena Gonzalez
Fatuma Guyo
Billie Hame, Balboa Ave. Citizens Advisory Committee
Phil Hart
John Hartley
Pete Hekman
Cathleen Higgins, Municipal Employees Association
Gary G. Hill

Jewell D. Hooper
Bob Ilko
Latoya Jarrett, Common Cause
Michael Jenkins
Forney Johnson
Herb Johnson, San Diego Rescue Mission
Andrew Jones, Deputy City Attorney Association
Frank Jordan
Charles Kaminski
Maggie Kennedy
Deborah Knight
Calvin D. Langston
Richard Lawrence
Richard Ledford, San Diego Regional Chamber of Commerce
Rev. Willie E. Manley, Greater Life Baptist
Susan Medek
John McNab
Ryan Mims
Julie Osborn
William S. Pennick
Dorene Dias Pesta
Scott Peters
Millie Pilot
Anthony Porello
Charles Pratt
Eddie Price
Juan A. Ramirez
Janet Richards
Jarvis Ross
Mel Shapiro
Mignon Sherer
Wilbur Smith
Jackie Statman
John W. Strump
Joy Sunyata
Judy Swink
Joyce Tavrow
Jack Tex
Ian Trowbridge
Jim Varnador
Tommie Watson
Howard Wayne
Mary Jean Word
Ann Zahner
T.J. Zane, The Lincoln Club of San Diego County
Camille Zombro

**LIST OF INDIVIDUALS INVITED TO SPEAK BEFORE THE
COMMITTEE AT MEETINGS OF THE COMMITTEE AND
SUBCOMMITTEE AND PUBLIC FORUMS**

Name	Topic	Date
Michael Aguirre, San Diego City Attorney	Charter Section 40 and the City Attorney.	July 27, 2007 Duties of Elected Officials Subcommittee meeting
Bill Anderson, Director of Planning, San Diego	Overview of the general plan and community updates and well as project review.	May 18, 2007 Interim Strong Mayor Subcommittee meeting
Dan Bamberger, Deputy City Attorney, San Diego	Charter Section 40 and the City Attorney.	August 31, 2007 Duties of Elected Officials Subcommittee meeting
Ruben Barrales, President of the San Diego Regional Chamber of Commerce	Strong Mayor in the City of San Diego.	April 27, 2007 Full Committee meeting
Jaymie Bradford, Office of the Mayor	Redevelopment/Land Use and the Charter.	June 15, 2007 Interim Strong Mayor Subcommittee meeting
Lisa Briggs, Policy Advisor to Mayor Sanders	City Labor Unions and the Charter.	May 11, 2007 Full Committee meeting
	Charter Sections 57 & 58.	June 15, 2007 Duties of Elected Officials Subcommittee meeting
Erik W. Bruvold, President of San Diego Institute for Policy Research	Informational Report on Budgetary Authority under the San Diego Charter.	May 11, 2007 Full Committee meeting
Jerry Butkiewicz, San Diego-Imperial Counties Labor Council, C.E.O.	A Labor and Community Response to the Charter Reform.	June 22, 2007 Full Committee meeting
Lisa Celaya, Office of the Independent Budget Analyst	Redevelopment/Land Use and the Charter.	June 15, 2007 Interim Strong Mayor Subcommittee meeting
Shauna Clark, Los Angeles Charter Review Commission Policy Analyst	What Makes a Good City Charter?	June 22, 2007 Full Committee meeting
Anna Danagger, Program Manager, Business Office	Budgetary Authority and the Charter.	May 18, 2007 Duties of Elected Officials Subcommittee meeting
Carl DeMaio, Performance Institute, President	Separation of Powers and Charter reform.	May 11, 2007 Full Committee meeting
Brent Eidson, Office of the Mayor	Mutual aid pacts providing Fire Dept. with additional support in emergencies.	July 13, 2007 Duties of Elected Officials Subcommittee meeting
Kevin Faulconer, Councilmember District 2	Audit Committee.	June 22, 2007 Full Committee meeting
Ronne Froman, Chief Operating Officer, City Of San Diego	Presentation on the necessity for Charter review in San Diego.	May 11, 2007 Full Committee meeting

	Appointment and supervision of Personnel Director under Strong Mayor.	June 15, 2007 Duties of Elected Officials Subcommittee meeting
Les Girard, Former Deputy City Attorney, S.D., and attorney with McKenna Long & Aldridge	Redevelopment law and the City of San Diego.	May 18, 2007 Interim Strong Mayor Subcommittee meeting
	Redevelopment/Land Use and the Charter.	June 15, 2007 Interim Strong Mayor Subcommittee meeting
Jay Goldstone, CFO for the City of San Diego	Recommendations contained in the Kroll Report.	May 18, 2007 Financial Reform Subcommittee meeting
CFO and Acting COO for San Diego	Personnel Director in Comparative Perspective.	July 13, 2007 Duties of Elected Officials Subcommittee meeting
Lorena Gonzalez, San Diego-Imperial Counties Labor Council, Political Director	A Labor and Community Response to the Charter Reform.	June 22, 2007 Full Committee meeting
Phil Hart, Mission Valley Resident	Comments on the Strong Mayor Form of Government.	September 6, 2007 Full Committee meeting
Cathleen Higgins, San Diego Municipal Employees Association	The appropriateness of the current composition of the SDCERS Board of Administration.	August 24, 2007 Financial Reform Subcommittee meeting
Ben Hueso, Councilmember District 8	Remarks on Charter reform process.	July 19, 2007, Public Forum, Council District 8
Stan Keller, SEC Appointed Independent City Monitor	Audit Committee.	June 22, 2007 Full Committee meeting
San Diego Police Chief William Landsdowne	Section 117, 57 and 58 regarding non-contracting out safety employees.	June 29, 2007 Duties of Elected Officials Subcommittee meeting
Elizabeth Maland, San Diego City Clerk	Charter Review and the Process for Submitting Ballot Measures.	June 1, 2007 Full Committee meeting
Theresa McAteer, former S.D. Deputy City Attorney; McAteer and McAteer	Budgetary Authority and the Charter.	May 18, 2007 Duties of Elected Officials Subcommittee meeting
Doug McCalla, CIO for SDCERS	Composition of SDCERS Board of Administration; Opting into CalPERS.	September 7, 2007 Financial Reform Subcommittee meeting
George Mitrovich, San Diego City Club President	2004 Strong Mayor Committee.	April 13, 2007 Full Committee meeting
Betsy Morris, San Diego Housing Authority	Necessity of independence of Housing Authority from Redevelopment Agency.	August 6, 2007 Interim Strong Mayor Subcommittee meeting
Barry, Newman, San Diego	Recommendations to	June 1, 2007 Full

County Taxpayers Association	Charter Committee-- Strong Mayor; Kroll Rept.	Committee meeting
Council President Scott Peters	New Role for the City Council under Prop. F. Comments on need for Charter reform. Filling Vacancies and Establishing Salaries. Council members' assignments to Council committees, e.g. Audit.	April 27, 2007 Full Committee meeting June 28, 2007, Public Forum, Council District 1 June 29, 2007 Duties of Elected Officials Subcommittee meeting August 31, 2007 Financial Reform Subcommittee meeting
Jay Poole, City of Chesapeake, representing the Association of Local Government Auditors	Audit Committee and the position of Internal Auditor.	August 31, 2007 Financial Reform Subcommittee meeting
Harriet Richardson, City of San Francisco, representing the Association of Local Government Auditors	Audit Committee and the position of Internal Auditor.	August 31, 2007 Financial Reform Subcommittee meeting
Ron Saathoff, President of San Diego City Firefighters Local 145	The Role of the City's Personnel Director.	June 29, 2007 Duties of Elected Officials Subcommittee meeting
Mayor Jerry Sanders	Implementing the Strong Mayor Form of Governance in the City of San Diego. The importance of Charter reform for the City. Commending public participation in the Charter change process. Thanking community members for involvement in Charter reform. Appreciation of public participation in important work of Charter Review Committee.	April 27, 2007 Full Committee meeting June 28, 2007, Public Forum, Council District 1 July 19, 2007, Public Forum, Council District 8 July 24, 2007, Public Forum, Council District 4 July 28, 2007, Public Forum, Council District 3
Rich Snapper, S.D. Personnel Director	Human Resources and the Personnel Department within the Charter. The responsibilities of the Personnel Director.	June 29, 2007 Duties of Elected Officials Subcommittee meeting July 13, 2007 Duties of Elected Officials

	Personnel Director.	Subcommittee meeting July 13, 2007 Duties of Elected Officials Subcommittee meeting
Randy Spenla, City Auditor, City of Phoenix	Internal Auditor and Audit Committee.	August 10, 2007 Financial Reform Subcommittee meeting
Greg Stepanicich, Municipal Attorney	Charter Section 40 and the role of the City Attorney.	August 24, 2007 Duties of Elected Officials Subcommittee meeting
Andrea Tevlin, San Diego's Independent Budget Analyst	Informational Report on Budgetary Authority in the San Diego Charter.	May 11, 2007 Full Committee meeting
Chris Waddell, General Counsel for SDCERS	Composition of SDCERS Board of Administration; Opting into CalPERS.	September 7, 2007 Financial Reform Subcommittee meeting
Janice Weinrick, Assistant Director, Economic Development and Community Services	Overview of the general plan and community updates and well as project review.	May 18, 2007 Interim Strong Mayor Subcommittee meeting
John Wertz, Vice Chairman, '88 Charter Review Commission	1989 Charter Committee Report.	April 13, 2007 Full Committee meeting
Governor Pete Wilson	Historical and Statewide Perspective on Strong Mayor Governance in the City of San Diego.	April 27, 2007 Full Committee meeting
Tony Young, Councilmember District 4	Welcoming public to Charter reform process.	July 24, 2007, Public Forum, Council District 4

RESEARCH RESOURCES

LIST OF MATERIALS CONSULTED

The Committee wanted to guarantee that its recommendations would be based on a strong foundation. Therefore, the staff conducted extensive research into the City's present operations under the Charter. That was greatly facilitated by the participation of the public speakers listed in the two previous tables. Yet the Committee felt a need to do its due diligence by conducting its own research. Therefore, the Committee asked its staff to look at both San Diego's experience, as well as those of other cities.

In order to perform its assigned task, the staff thought it was absolutely critical to understand the City Charter. A city charter is a local government's constitution, and unless one understands how it was formed, it would be irresponsible to suggest any changes to it. A city's charter tracks its history as sensitively as a seismograph vibrates along with the tectonic plates. Given this consideration, the staff felt it was imperative to know the Charter's history.

Consequently, the staff reviewed the *Statutes of California*, sample ballots and San Diego newspaper archives to track down every Charter under which the City has been governed since 1850. The staff reviewed the 1850 Act of Incorporation, the 1852 repeal of the Incorporation Act and creation of the Board of Trustees to govern the City, and the 1868, 1872 and 1876 revisions of the 1852 "charter." In addition, the staff examined all of the home rule charters under which the City has operated: its first "home rule" Charter of 1889 (only the fourth one allowed in California, and the fifth in the nation); the 1909 Charter, under which the City adopted the Commission form of government; and the 1931 Charter, which moved the City to the Council-Manager form of governance. The staff tracked down every single one of the hundreds of Charter amendment the voters have passed, from the first 11 amendments adopted in 1901 to the 2 amendments the City passed last year. Major amendments included the City's move from a bicameral to a unicameral legislature (1905), the increase in City Council members from six to eight (1963), the City's adoption of district primaries (1988), and the ratification of the Strong Mayor form of governance (2004). The staff also examined the work of the Charter review committees that have made recommendations for changes to the 1931 Charter; in particular, staff looked at the work of the committees of 1940-1941, 1952-1953, 1962, 1968, 1973, 1988, 2000 and 2004.

Besides examining primary documents, the staff researched the secondary literature on San Diego government, including books such as City Attorney Shelley Higgins' *This Fantastic City: San Diego* (named an official policy document by the City of San Diego), Richard Pourade's multi-volume history of the City, the Price and Stone monograph, *City Manager Government in San Diego*, Captain George Mott's commentary on the origins of the 1931 Charter, *San Diego—Politically Speaking*, and a number of masters theses on the history of this City's government and politics.

In order to provide a comparative perspective, it was critical to examine the experiences of other cities, and particularly those that are Strong Mayor cities or have recently undergone the transition San Diego recently made. In addition, the governmental systems of large United States and California cities, as well as cities noted for "best practices", were a key source of information. The staff surveyed the largest 15 cities in the United States and California to determine their: auditing

functions; automatic charter review processes; City Attorney structures; Council sizes; Council vote and veto provisions; human resources and personnel systems; pension systems; and rules for setting the salaries of elected officials. On some issues, the staff surveyed the top 100 cities in the country. Some cities outside the top 15 were also examined because they are Strong Mayor or “best practices cities”.

In some cases, the Subcommittee wanted further information on a specific item, such as what other cities do in terms of establishing a legislative analyst, or how the State of California sets salaries for elected officials. Yet another example would be the research staff conducted to ascertain whether there was a correlation between the auditing structures and municipal bond ratings of the nation’s largest cities. This specialized research was done upon request, and appears in the Subcommittees’ work product. In order to answer these research requests, the staff reviewed the charters, municipal codes and websites of most major cities in the country. A list of some of the websites that the staff accessed in doing these reports follows the end of this summary of research.

In other areas, the Committee requested more detailed information on a specific issue for a few large cities. Therefore, staff conducted telephone interviews with budget officials in such cities as Los Angeles, New York City, Oakland, Philadelphia and San Francisco. The Committee would like to thank the following individuals, who gave their time to answering staff questions regarding the balanced budget requirement in actual practice: Jennifer Lopez, from the L.A. City Administrative Office; Doug Turetsky, from the City of New York’s Independent Budget Office; Barbara Parker, from the Office of the City Attorney of Oakland; Diane Reed, from Philadelphia’s Department of Finance, Office of the Budget; and Michael Stover from the Office of the Legislative Analyst for the City and County of San Francisco.

In addition, the staff employed the extensive public administration literature on the issue of balanced budgets. The staff provided information from such books as Esther Fuchs’ *Mayors and Money* (an examination of how Chicago’s Strong Mayor prevented fiscal crisis, whereas New York City’s formerly weak mayor system allowed it, when both faced the economic downturns of the mid 1970s). The staff analyzed the work of the 2004 NYC Charter process, which Fuchs led to enact a stronger balanced budget regime for the Big Apple. The staff also brought in the insights of other important works, such as Jonathan Kahn’s *Budgeting Democracy* (an excellent book on how the budget concept that municipalities invented, and state and national governments copied, ultimately reconstituted the relationship between citizens and their government). Because San Diego is a California municipality and faces different constraints than New York City, staff also consulted Mark Baldassare’s *When Government Fails*, which explains the causes of Orange County’s 1994 bankruptcy.

The staff reviewed the experiences of other cities that have recently undergone the Strong Mayor transition, such as New York City, Indianapolis, Fresno, New Orleans, Columbus, Los Angeles, Oakland and San Francisco. Because San Diego has recently undergone this transition, the City’s own website contains a great deal of information, which could also be accessed by staff. It is not practical to attempt to convey in this brief report all of the interviews conducted, and charters and municipal codes studied. The Committee’s three Subcommittees wanted to have access to the best information available, and the staff attempted to ensure they had all the data needed to make informed decisions. Because the briefs, memoranda, reports and tables that the Committee requested and reviewed are too compendious to include in this report, they may be accessed via the Committee’s website.

LIST OF CHARTER-RELATED WEBSITES REFERENCED IN COMMITTEE REPORTS

Anaheim City Charter	http://www.anaheim.net/docs_agend/charter.pdf
Anaheim Municipal Code	http://www.amlegal.com/anaheim_ca/
Anaheim, City of	http://www.anaheim.net/
Bakersfield City Charter	http://www.qualitycodepublishing.com/codes/bakersfield/view.php?topic=charter_of_the_city_of_bakersfield_state&frames=on
Bakersfield Municipal Code	http://www.qualitycodepublishing.com/codes/bakersfield/main.php
Bakersfield, City of	http://www.bakersfieldcity.us/
Boston City Charter	http://www.cityofboston.gov/cityclerk/pdfs/cc_charter.pdf
Chicago	See Illinois Code of General Statutes Article 65.
Clearwater, FL City Charter	http://www.clearwater-fl.com/gov/codes/pdf/City_Charter.pdf
Cleveland City Charter	http://caselaw.lp.findlaw.com/clevelandcodes/
Columbus City Charter	http://www.ordlink.com/codes/columbus/_DATA/CHARTER/index.html
Columbus Municipal Code	http://municipalcodes.lexisnexis.com/codes/columbus/
Columbus, City of	http://www.cityofcolumbus.org/
Dallas City Charter	http://www.dallascityhall.com/pdf/cao/01Chartr.pdf
Dallas City Codes	http://www.dallascityhall.com/html/codes.html
Dallas, City of	http://www.dallascityhall.com/
Denver City Charter	http://www.municode.com/resources/gateway.asp?pid=10257&sid=6
Detroit City Code	http://www.municode.com/resources/gateway.asp?sid=22&pid=10649
Detroit City Council	http://www.ci.detroit.mi.us/legislative/CityCouncil/
Detroit, City of	http://www.ci.detroit.mi.us/default.htm
Fresno City Charter	http://www.municode.com/resources/gateway.asp?pid=10421&sid=5
Fresno Municipal Code	http://www.municode.com/resources/gateway.asp?pid=10421&sid=5
Fresno Redevelopment Agency	http://www.fresnorda.com/
Fresno, City of	http://www.fresno.gov/default.htm
Houston City Charter	http://www.houstontx.gov/charter/index.html

Houston City Council	http://www.houstontx.gov/council/
Indianapolis, City of	http://www.indygov.org/home.htm
Jacksonville, City of	http://www.coj.net/default.htm
Long Beach City Charter	http://municipalcodes.lexisnexis.com/codes/longbeach_charter/
Long Beach Municipal Code	http://municipalcodes.lexisnexis.com/codes/longbeach/
Long Beach Redevelopment Agency	http://www.longbeach.gov/cd/redevelopment/default.asp
Long Beach, City of	http://www.ci.long-beach.ca.us/
Los Angeles City Charter	http://www.amlegal.com/los_angeles_ca/
Los Angeles Community Redevelopment Agency	http://www.crala.org
Los Angeles Municipal Code	http://www.amlegal.com/los_angeles_ca/
Nashville-Davidson City Charter	http://www.municode.com/resources/gateway.asp?pid=14214&sid=42
New Orleans City Charter	http://www.cityofno.com/portal.aspx?portal=1&tabid=9
New York Administrative Code	http://public.leginfo.state.ny.us/menugetf.cgi
New York City Charter	http://www.nyc.gov/html/charter/downloads/pdf/citycharter2004.pdf
New York City Council	http://www.nyccouncil.info/
Oakland City Charter	http://ordlink.com/cgi-bin/hilite.pl/codes/oakland/_DATA/CHARTER/index.html
Oakland Community and Economic Development Agency	http://www.business2oakland.com/main/redevelopment.htm
Oakland Municipal Code	http://ordlink.com/cgi-bin/hilite.pl/codes/oakland/maintoc.htm
Oakland, City of	http://www.oaklandnet.com/
Philadelphia City Charter	http://www.amlegal.com/library/pa/philadelphia.shtml
Philadelphia City Code	http://www.amlegal.com/library/pa/philadelphia.shtml
Philadelphia City Council	http://www.phila.gov/citycouncil/

Philadelphia Mayor's Office	http://www.phila.gov/mayor/
Philadelphia, City of	http://www.phila.gov/
Phoenix City Charter	http://www.municode.com/resources/gateway.asp?pid=13485&sid=3
Phoenix City Code	http://www.municode.com/resources/gateway.asp?pid=13485&sid=3
Phoenix, City of	http://phoenix.gov/
Portland City Charter	http://www.portlandonline.com/auditor/index.cfm?c=cibei
Riverside City Charter	http://www.riversideca.gov/municipal_code/Title_CH/Default.htm
Riverside, City of	http://www.riversideca.gov/
Riverside Municipal Code	http://www.riversideca.gov/municipal_code/
Sacramento City Charter	http://www.qcode.us/codes/sacramento/view.php?topic=city_of_sacramento_charter
Sacramento City Codes	http://www.qcode.us/codes/sacramento/
Sacramento Housing & Redevelopment Agency	http://www.shra.org
Sacramento, City of	http://www.cityofsacramento.org/
San Antonio City Charter	http://www.sanantonio.gov/clerk/charter/charter.htm
San Antonio City Code of Ordinances	http://www.municode.com/resources/gateway.asp?pid=11508&sid=43
San Antonio, City of	http://www.sanantonio.gov/?res=1280&ver=true
San Francisco City and County Charter	http://www.municode.com/Resources/gateway.asp?pid=14130&sid=5
San Francisco City and County Codes	http://www.municode.com/Resources/ClientCode_List.asp?cn=San%20Francisco&sid=5&cid=4201
San Francisco Redevelopment Agency	http://www.sfgov.org/site/sfra_index.asp
San Francisco, City and County of	http://www.sfgov.org/
San Jose City Charter	http://www.sanjoseca.gov/clerk/Charter.asp
San Jose City Council	http://www.sanjoseca.gov/council.html

San Jose Municipal Code	http://www.municode.com/Resources/gateway.asp?pid=14367&sid=5
San Jose Redevelopment Agency	http://www.sjredevelopment.org
San Jose, City of	http://www.sanjoseca.gov/
Santa Ana, City of	http://www.ci.santa-ana.ca.us/
Stockton City Charter	http://www.stocktongov.com/clerk/pages/Charter/index.cfm
Stockton Municipal Code	http://www.stocktongov.com/SMC/Chapter01/ChapterIndex.cfm
Stockton, City of	http://www.stocktongov.com/

APPENDIX II

TEXT OF CHARTER LANGUAGE AND OFFICIAL BALLOT (STRIKEOUT AND UNDERLINE) LANGUAGE RECOMMENDED

Category A, Recommendation #1: Sunset Revision

Summary of Recommendation

Extends the trial period in Section 255 (Operative Date; Sunset of Article; Future Action by Voters) to December 31, 2014, at which point Article XV (Strong Mayor Trial Form of Governance) shall be made permanent, unless voters approve a ballot measure to extend, shorten or repeal the effective period of this Article.

Recommended Charter Language

Section 255: Operative Date; Future Action by Voters

This Article shall remain in effect until December 31, 2014, at which time it shall become permanent unless voters have approved a ballot measure to extend, shorten or repeal the effective period of this Article.

Recommended Language for Official Ballot

Section 255: Operative Date; ~~Sunset of Article;~~ Future Action by Voters

~~(a) The date for the provisions of this Article to become operative is January 1, 2006.~~

~~(b) After January 1, 2006, the provisions of t[his Article shall remain in effect for a period of five years (until December 31, 2010), at which time this Article shall become permanent unless voters have approved a ballot measure automatically repealed and removed from the Charter. However, the Council and the people reserve the right to propose amendments to the Charter at the November 2010 election or sooner to extend, make permanent, shorten or repeal the effective period of this Article and to consider increasing the number of Council districts to nine at the time of the next City Council district reapportionment which follows the national decennial census in 2010.~~

Category A, Recommendation #2: Veto Override

Summary of Recommendation

Amends Section 285 (Enactment Over Veto) and Section 290 (Council Consideration of Salary Ordinance and Budget; Special Veto Power) to require a two-thirds Council majority vote to override a mayoral veto.

(AND)

Amends Section 285 (Enactment Over Veto) to require that if an ordinance or resolution requires a two-thirds Council majority to pass, then the Council would need to vote by a majority of two-thirds-plus-one-member in order to override a mayoral veto.

Recommended Charter Language

Section 285: Enactment Over Veto

The Council shall reconsider any resolution or ordinance vetoed by the Mayor. If, after such reconsideration, at least two-thirds of the Council vote in favor of passage, that resolution or ordinance shall become effective notwithstanding the Mayor's veto. If a two-thirds vote or other supermajority vote greater than two-thirds of the Council is required for the passage of any resolution or ordinance by the provisions of this Charter or other superseding law, then the number of Council votes necessary to override the Mayor's veto shall be one vote more than was necessary to pass the resolution or ordinance. If a vetoed resolution or ordinance does not receive sufficient votes to override the Mayor's veto within thirty calendar days of such veto, that resolution or ordinance shall be deemed disapproved and have no legal effect.

Section 290: Council Consideration of Salary Ordinance and Budget; Special Veto Power

###

(2) If modified by the Council, the budget shall be returned to the Mayor as soon as practicable.

(A) The Mayor shall, within five business days of receipt either approve, veto, or modify any line item approved by the Council.

(B) The Council shall thereafter have five business days within which to override any vetoes or modifications made by the Mayor pursuant to section 290(b)(2)(A). Any item in the proposed budget that was vetoed or otherwise modified by the Mayor shall remain as vetoed or modified unless overridden by a two-thirds vote of the Council as set forth in Section 285. In voting to override the actions of the Mayor, the Council may adopt either an amount it had previously approved or an amount in between the amount originally approved by the Council and the amount approved by the Mayor, subject to the balanced budget requirements set forth in section 71.

Recommended Language for Official Ballot

Section 285: Enactment Over Veto

The Council shall reconsider any resolution or ordinance vetoed by the Mayor. If, after such reconsideration, at least ~~five member~~two-thirds of the Council vote in favor of passage, that resolution or ordinance shall become effective notwithstanding the Mayor's veto. If ~~more than five votes are a~~a two-thirds vote or other supermajority vote greater than two-thirds of the Council is required for the passage

of any resolution or ordinance by the provisions of this Charter or other superseding law, ~~such larger vote shall be required to override the veto of the Mayor~~ then the number of Council votes necessary to override the Mayor's veto shall be one vote more than was necessary to pass the resolution or ordinance. If a vetoed resolution or ordinance does not receive sufficient votes to override the Mayor's veto within thirty ~~(30)~~ calendar days of such veto, that resolution or ordinance shall be deemed disapproved and have no legal effect.

Section 290: Council Consideration of Salary Ordinance and Budget; Special Veto Power

###

(2) If modified by the Council, the budget shall be returned to the Mayor as soon as practicable.

(A) The Mayor shall, within five business days of receipt either approve, veto, or modify any line item approved by the Council.

(B) The Council shall thereafter have five business days within which to override any vetoes or modifications made by the Mayor pursuant to section 290(b)(2)(A). Any item in the proposed budget that was vetoed or otherwise modified by the Mayor shall remain as vetoed or modified unless overridden by the ~~vote of at least five members of the Council~~ a two-thirds vote of the Council as set forth in Section 285. In voting to override the actions of the Mayor, the Council may adopt either an amount it had previously approved or an amount in between the amount originally approved by the Council and the amount approved by the Mayor, subject to the balanced budget requirements set forth in section 71.

Category A, Recommendation #3: Eleven-Member City Council

Summary of Recommendation

Amends Section 270 (The Council) to increase the number of Council districts from eight to eleven, with the redistricting to add the three additional districts to occur as soon as practicable.

Recommended Charter Language

Section 270: The Council

(a) The Council shall be composed of eleven councilmembers elected by district, and shall be the legislative body of the City.

###

(j) The City shall be redistricted, as soon as practicable, to establish the additional districts required by this section. Such redistricting process shall follow the terms prescribed by Charter sections 5 and 5.1.

Recommended Language for Official Ballot

Section 270: The Council

(a) The Council shall be composed of ~~eight~~eleven councilmembers elected by district, and shall be the legislative body of the City.

###

(j) The City shall be redistricted, as soon as practicable, to establish the additional districts required by this section. Such redistricting process shall follow the terms prescribed by Charter sections 5 and 5.1.

Category A, Recommendation #4: Independent Budget Analyst

Summary of Recommendation

Amends Section 270 (The Council) to clarify that Office of the Independent Budget Analyst is authorized under the Charter to act as a budgetary and policy analyst for the City Council.

Recommended Charter Language

Section 270: The Council

###

The Council shall have the right to establish an Office of the Independent Budget Analyst to be managed and controlled by the Independent Budget Analyst. The Council shall appoint this independent officer who shall serve at the pleasure of the Council and may be removed from Office by the Council at any time. The Office of the Independent Budget Analyst shall provide budgetary and policy analysis for the City Council. The Council shall determine the specific powers and duties of this Office and its manager by ordinance.

Recommended Language for Official Ballot

Section 270: The Council

###

The Council shall have the right to establish an Office of the Independent Budget Analyst to be managed and controlled by the Independent Budget Analyst. The Council shall appoint this independent officer who shall serve at the pleasure of the Council and may be removed from Office by the Council at any time. The Office of the Independent Budget Analyst shall provide budgetary and policy analysis for the City Council. The Council shall determine the specific powers and duties of this Office and its manager by ordinance.

Category B, Recommendation #5: Chief Financial Officer

Summary of Recommendation

Amends Section 39 (City Auditor and Comptroller) to indicate that the Chief Financial Officer shall assume the responsibilities of the City Auditor and Comptroller.

(AND)

Amends Section 45 (City Treasurer) to remove the need for Council confirmation of the City Treasurer.

Recommended Charter Language

Section 39: Chief Financial Officer.

The Chief Financial Officer shall be appointed by the City Manager and confirmed by the City Council for an indefinite term and shall serve until his or her successor is appointed and qualified. The Chief Financial Officer shall be the chief fiscal officer of the City. He or she shall exercise supervision over all accounts, and accounts shall be kept showing the financial transactions of all Departments of the City upon forms prescribed by the Chief Financial Officer and approved by the City Manager and the Council. Subject to the direction and supervision of the City Manager, the Chief Financial Officer shall be responsible for the creation of the City's annual budget. He or she shall also be responsible for oversight of the City's financial management, treasury, risk management and debt management functions. He or she shall submit to the City Manager and to the Council at least monthly a summary statement of revenues and expenses for the preceding accounting period, detailed as to appropriations and funds in such manner as to show the exact financial condition of the City and of each Department, Division and office thereof. No contract, agreement, or other obligation for the expenditure of public funds shall be entered into by any officer of the City and no such contract shall be valid unless the Chief Financial Officer shall certify in writing that there has been made an appropriation to cover the expenditure and that there remains a sufficient balance to meet the demand thereof. He or she shall perform the duties imposed upon Chief Financial Officers by the laws of the State of California, and such other duties as may be imposed upon him or her by ordinances of the Council, but nothing shall prevent the City Manager from transferring to other officers matters in charge of the Chief Financial Officer which do not relate directly to the finances of the City. The Chief Financial Officer shall prepare and submit to the City Manager such information as shall be required by the City Manager for the preparation of an annual budget. The Chief Financial Officer shall appoint his or her subordinates subject to the Civil Service provisions of this Charter. The authority, power and responsibilities conferred upon the Auditor and Comptroller by this Charter shall be transferred to, assumed, and carried out by the Chief Financial Officer.

Section 45: City Treasurer

The Manager shall appoint the Treasurer. He or she shall perform duties imposed upon City Treasurers by general law, the City Charter, or ordinances of the Council. The office of the Treasurer shall consist of the Treasurer and such subordinate officers and employees as shall be authorized by ordinance.

[No alterations are proposed for the rest of Charter section 45, and thus it is not reproduced here.]

Recommended Language for Official Ballot

Section 39: ~~City Auditor and Comptroller~~Chief Financial Officer.

The ~~City Auditor and Comptroller~~Chief Financial Officer shall be ~~elected~~appointed by the City Manager and confirmed by the City Council for an indefinite term and shall serve until his or her successor is ~~elected~~appointed and qualified. The ~~City Auditor and Comptroller~~Chief Financial Officer shall be the chief fiscal officer of the City. He or she shall exercise supervision over all accounts, and accounts shall be kept showing the financial transactions of all Departments of the City upon forms prescribed by him~~the Chief Financial Officer~~ and approved by the City Manager and the Council. Subject to the direction and supervision of the City Manager, the Chief Financial Officer shall be responsible for the creation of the City's annual budget. He or she shall also be responsible for oversight of the City's financial management, treasury, risk management and debt management functions. He or she shall submit to the City Manager and to the Council at least monthly a summary statement of revenues and expenses for the preceding accounting period, detailed as to appropriations and funds in such manner as to show the exact financial condition of the City and of each Department, Division and office thereof. No contract, agreement, or other obligation for the expenditure of public funds shall be entered into by any officer of the City and no such contract shall be valid unless the ~~Auditor and Comptroller~~Chief Financial Officer shall certify in writing that there has been made an appropriation to cover the expenditure and that there remains a sufficient balance to meet the demand thereof. He or she shall perform the duties imposed upon ~~City Auditors and Comptrollers~~Chief Financial Officers by the laws of the State of California, and such other duties as may be imposed upon him or her by ordinances of the Council, but nothing shall prevent the ~~Council~~City Manager from transferring to other officers matters in charge of the ~~City Auditor and Comptroller~~Chief Financial Officer which do not relate directly to the finances of the City. He~~The Chief Financial Officer~~ shall prepare and submit to the City Manager such information as shall be required by the City Manager for the preparation of an annual budget. He~~The Chief Financial Officer~~ shall appoint his or her subordinates subject to the Civil Service provisions of this Charter. The authority, power and responsibilities conferred upon the Auditor and Comptroller by this Charter shall be transferred to, assumed, and carried out by the Chief Financial Officer.

Section 45: City Treasurer

The Manager shall appoint a~~the~~ Treasurer ~~subject to confirmation by a majority of the members of the Council.~~ He or she shall perform duties imposed upon City Treasurers by general law, the City Charter, or ordinances of the Council. The office of the Treasurer shall consist of the Treasurer and such subordinate officers and employees as shall be authorized by ordinance.

[No alterations are proposed for the rest of Charter section 45, and thus it is not reproduced here.]

Category B, Recommendation #6: Audit Committee

Summary of Recommendation

Adds a new Section 39.1 (Audit Committee) to establish an Audit Committee consisting of five members composed of two members of the City Council, one of whom shall serve as Chair, and three members of the public. The public members shall be appointed by the City Council from a pool of candidates to be recommended by a screening committee comprised of the Chief Financial Officer, the Independent Budget Analyst, the City Attorney or his or her designee, a member of the City Council and two outside financial experts.

Recommended Charter Language

Section 39.1: Audit Committee

The Audit Committee shall be an independent body consisting of five members. Notwithstanding any other Charter provision to the contrary, the Audit Committee shall be appointed as provided under this section. To ensure its independence, the Audit Committee shall be composed of two members of the City Council and three members of the public. The two Councilmembers shall be appointed by the Council, one of whom shall serve as Chair of the Audit Committee. The three (3) public members of the Audit Committee shall be appointed by the City Council from a pool of candidates to be recommended by a majority vote of a screening committee comprised of a member of the City Council, the Chief Financial Officer, the City Attorney or his or her designee, the Independent Budget Analyst and two (2) outside financial experts. Public members of the Audit Committee shall possess the independence, experience and technical expertise necessary to carry out the duties of the Audit Committee. This expertise includes but is not limited to knowledge of accounting, auditing and financial reporting. The public members of the Audit Committee shall serve for terms of four years and until their successors have been appointed and qualified. Members of the Audit Committee are limited to two full consecutive terms, with one term intervening before they become eligible for reappointment. Notwithstanding any other provision of this section, appointments shall be made so that not more than one term of office shall expire in any one year.

The Audit Committee shall have oversight responsibility regarding the City's accounting, auditing, internal controls and any other financial or business practices required by this Charter or City ordinance. The Audit Committee shall be responsible for directing and reviewing the work of the City Auditor and the City Auditor shall report directly to the Audit Committee. The Audit Committee shall recommend the annual compensation of the City Auditor and annual budget of the Office of City Auditor to the Council and shall be responsible for an annual performance review of the City Auditor. The Audit Committee shall recommend to the Council the retention of the City's outside audit firm and, when appropriate, the removal of such firm. The Audit Committee shall monitor the engagement of the City's outside auditor and resolve all disputes between City management and the outside auditor with regard to the presentation of the City's annual financial reports. All such disputes shall be reported to the Council. The Council shall specify the powers and duties of the Audit Committee by ordinance. This section shall not be subject to the provisions of section 11.1.

Recommended Language for Official Ballot

Section 39.1: Audit Committee

The Audit Committee shall be an independent body consisting of five members. Notwithstanding any other Charter provision to the contrary, the Audit Committee shall be appointed as provided under this section. To ensure its independence, the Audit Committee shall be composed of two members of the City Council and three members of the public. The two Councilmembers shall be appointed by the Council, one of whom shall serve as Chair of the Audit Committee. The three (3) public members of the Audit Committee shall be appointed by the City Council from a pool of candidates to be recommended by a majority vote of a screening committee comprised of a member of the City Council, the Chief Financial Officer, the City Attorney or his or her designee, the Independent Budget Analyst and two (2) outside financial experts. Public members of the Audit Committee shall possess the independence, experience and technical expertise necessary to carry out the duties of the Audit Committee. This expertise includes but is not limited to knowledge of accounting, auditing and financial reporting. The public members of the Audit Committee shall serve for terms of four years and until their successors have been appointed and qualified. Members of the Audit Committee are limited to two full consecutive terms, with one term intervening before they become eligible for reappointment. Notwithstanding any other provision of this section, appointments shall be made so that not more than one term of office shall expire in any one year.

The Audit Committee shall have oversight responsibility regarding the City's accounting, auditing, internal controls and any other financial or business practices required by this Charter or City ordinance. The Audit Committee shall be responsible for directing and reviewing the work of the City Auditor and the City Auditor shall report directly to the Audit Committee. The Audit Committee shall recommend the annual compensation of the City Auditor and annual budget of the Office of City Auditor to the Council and shall be responsible for an annual performance review of the City Auditor. The Audit Committee shall recommend to the Council the retention of the City's outside audit firm and, when appropriate, the removal of such firm. The Audit Committee shall monitor the engagement of the City's outside auditor and resolve all disputes between City management and the outside auditor with regard to the presentation of the City's annual financial reports. All such disputes shall be reported to the Council. The Council shall specify the powers and duties of the Audit Committee by ordinance. This section shall not be subject to the provisions of section 11.1.

Category B, Recommendation #7: City Auditor

Summary of Recommendation

Adds a new Section 39.2 (City Auditor) to establish a City Auditor who shall be appointed by the City Manager in consultation with the Audit Committee and confirmed by the City Council. The City Auditor shall be a Certified Public Accountant or Certified Independent Auditor. The City Auditor shall serve for a term of ten (10) years and report to the Audit Committee. The Audit Committee with a four-fifths vote may terminate the City Auditor with a right to appeal to the City Council who can override the Audit Committee's action with a two-thirds vote.

Recommended Charter Language

Section 39.2: Office of City Auditor

The City Auditor shall be appointed by the City Manager, in consultation with the Audit Committee, and confirmed by the Council. The City Auditor shall be a certified public accountant or certified internal auditor. The City Auditor shall serve for a term of ten years. The City Auditor shall report to and be accountable to the Audit Committee and the Council. The City Auditor may be removed for cause by a vote of four-fifths of the members of the Audit Committee subject to the right of the City Auditor to appeal to the Council to overturn the Audit Committee's decision. Any such appeal must be filed with the City Clerk within 10 calendar days of receiving the notice of dismissal or termination from the Audit Committee. The City Clerk shall thereafter cause the appeal to be docketed at a regular open meeting of the Council no later than 30 days after the appeal is filed with the Clerk. The Council may override the decision of the Audit Committee to remove the City Auditor by a vote of two-thirds of the members of the Council. Nothing herein prevents the Council or the Audit Committee from meeting in closed session to discuss matters that are required by law to be discussed in closed session pursuant to State law.

The City Auditor shall prepare annually an Audit Plan and conduct audits in accordance therewith and perform such other duties as may be required by ordinance or as provided by the Constitution and general laws of the State. The City Auditor shall have access to, and authority to examine any and all records, documents, systems and files of the City and/or other property of any City department, office or agency, whether created by the Charter or otherwise. It is the duty of any officer, employee or agent of the City having control of such records to permit access to, and examination thereof, upon the request of the City Auditor or his or her authorized representative. It is also the duty of any such officer, employee or agent to fully cooperate with, and to make full disclosure of all pertinent information. All City contracts with consultants, vendors or agencies will be prepared with an adequate audit clause to allow the City Auditor access to the entity's records needed to verify compliance with the terms specified in the contract. Results of all audits and reports shall be made available to the public subject to exclusions of the Public Records Act. This section shall not be subject to the provisions of section 11.1.

Section 111: Audit of Accounts of Officers

Each year the Council shall provide that an audit shall be made of all accounts and books of all the Departments of the City. Such audit shall be made by independent auditors who are in no way connected with the City. Upon the death, resignation or removal of any officer of the City, the City Auditor shall cause an audit and

investigation of the accounts of such officer to be made and shall report to the Audit Committee. Either the Audit Committee or the Council may at any time provide for an independent examination or audit of the accounts of any or all officers or Departments of the City government. In case of death, resignation or removal of the City Auditor, the Audit Committee shall cause an audit to be made of his or her accounts. If, as a result of any such audit, an officer be found indebted to the City, the City Auditor, or other person making such audit, shall immediately give notice thereof to the Audit Committee, the Council, the Manager and the City Attorney, and the latter shall forthwith proceed to collect such indebtedness. This section shall not be subject to the provisions of section 11.1.

Recommended Language for Official Ballot

Section 39.2: Office of City Auditor

The City Auditor shall be appointed by the City Manager, in consultation with the Audit Committee, and confirmed by the Council. The City Auditor shall be a certified public accountant or certified internal auditor. The City Auditor shall serve for a term of ten years. The City Auditor shall report to and be accountable to the Audit Committee and the Council. The City Auditor may be removed for cause by a vote of four-fifths of the members of the Audit Committee subject to the right of the City Auditor to appeal to the Council to overturn the Audit Committee's decision. Any such appeal must be filed with the City Clerk within 10 calendar days of receiving the notice of dismissal or termination from the Audit Committee. The City Clerk shall thereafter cause the appeal to be docketed at a regular open meeting of the Council no later than 30 days after the appeal is filed with the Clerk. The Council may override the decision of the Audit Committee to remove the City Auditor by a vote of two-thirds of the members of the Council. Nothing herein prevents the Council or the Audit Committee from meeting in closed session to discuss matters that are required by law to be discussed in closed session pursuant to State law.

The City Auditor shall prepare annually an Audit Plan and conduct audits in accordance therewith and perform such other duties as may be required by ordinance or as provided by the Constitution and general laws of the State. The City Auditor shall have access to, and authority to examine any and all records, documents, systems and files of the City and/or other property of any City department, office or agency, whether created by the Charter or otherwise. It is the duty of any officer, employee or agent of the City having control of such records to permit access to, and examination thereof, upon the request of the City Auditor or his or her authorized representative. It is also the duty of any such officer, employee or agent to fully cooperate with, and to make full disclosure of all pertinent information. All City contracts with consultants, vendors or agencies will be prepared with an adequate audit clause to allow the City Auditor access to the entity's records needed to verify compliance with the terms specified in the contract. Results of all audits and reports shall be made available to the public subject to exclusions of the Public Records Act. This section shall not be subject to the provisions of section 11.1.

Section 111: Audit of Accounts of Officers

Each year the Council shall provide that an audit shall be made of all accounts and books of all the Departments of the City. Such audit shall be made by independent auditors who are in no way connected with the City. Upon the death, resignation or removal of any officer of the City, the ~~City Auditor and Comptroller~~ shall cause an audit and investigation of the accounts of such officer to be made and shall report to the ~~Manager and the Council~~ Audit Committee. Either the Audit Committee or the Council ~~or the Manager~~ may at any time provide for an independent examination or audit of the accounts of any or all officers or Departments of the City government. In case of death, resignation or removal of the ~~City Auditor and Comptroller~~, the ~~Audit Committee~~ Manager shall cause an audit to be made of his or her accounts. If, as a result of any such audit, an officer be found indebted to the City, the ~~City Auditor and Comptroller~~, or other person making such audit, shall immediately give notice thereof to the Audit Committee, the Council, the Manager and the City Attorney, and the latter shall forthwith proceed to collect such indebtedness. This section shall not be subject to the provisions of section 11.1.

Category B, Recommendation #8: Composition SDCERS Board of Administration

Summary of Recommendation

Recommends maintenance of the *status quo* in regard to the Board of Administration of the San Diego City Employees Retirement System. The recent Charter changes seem to be working well, despite recommendations by the Pension Reform Committee for a board very different in composition. *(Tentative; this has been recommended by the Subcommittee, but not yet deliberated by the full Committee.)*

Recommended Charter Language

[None proposed at this time; the Committee favors the status quo.]

Recommended Language for Official Ballot

[None proposed at this time; the Committee favors the status quo.]

Category C, Recommendation #9: Managed Competition

Summary of Recommendation

Amend section 117 (Unclassified and Classified Services) to clarify that Police officers, fire fighters and lifeguards who participate in the Safety Retirement System are exempt from Managed Competition.

Recommended Charter Language

Section 117: Unclassified and Classified Services

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(c) The City may employ any independent contractor when the City Manager determines, subject to City Council approval, City services can be provided more economically and efficiently by an independent contractor than by persons employed in the Classified Service while maintaining service quality and protecting the public interest. The City Council shall by ordinance provide for appropriate policies and procedures to implement this subsection. Such ordinance shall include minimum contract standards and other measures to protect the quality and reliability of public services. A City department shall be provided with an opportunity and resources to develop efficiency and effectiveness improvements in their operations as part of the department's proposal. The City Manager shall establish the Managed Competition Independent Review Board to advise the City Manager whether a City department's proposal or an independent contractor's proposal will provide the services to the City most economically and efficiently while maintaining service quality and protecting the public interest. The City Manager will appoint seven (7) members to the Board. Four (4) shall be private citizens whose appointments shall be subject to City Council confirmation. Each shall have professional experience in one or more of the following areas: finance, law, public administration, business management or the service areas under consideration by the City Manager. Three (3) shall be City staff including a City Manager staff designee, a City Council staff designee and the City Auditor and Comptroller or staff designee. Such appointees shall not have any personal or financial interests which would create conflict of interests with the duties of a Board member. Members of the Board shall be prohibited from entering into a contract or accepting employment from an organization which secures a City contract through the managed competition process for the duration of the contract. The City Council shall have the authority to accept or reject in its entirety any proposed agreement with an independent contractor submitted by the City Manager upon recommendation of the Managed Competition Independent Review Board. The City Manager shall have the sole responsibility for administering and monitoring any agreements with contractors. The City Manager shall be required to produce annual performance audits for contracted services, the cost of which must be accounted for and considered during the bidding process. In addition, the City Manager shall seek an independent audit every five (5) years to evaluate the City's experience and performance audits. During the period of time that the City operates under the Strong Mayor form of governance pursuant to Article XV, the reference herein to City Manager shall be deemed to refer to the Mayor."

(d) Police officers, firefighters and lifeguards who participate in the Safety Retirement System shall not be subject to Managed Competition.

Recommended Language for Official Ballot

Section 117: Unclassified and Classified Services

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(c) The City may employ any independent contractor when the City Manager determines, subject to City Council approval, City services can be provided more economically and efficiently by an independent contractor than by persons employed in the Classified Service while maintaining service quality and protecting the public interest. The City Council shall by ordinance provide for appropriate policies and procedures to implement this subsection. Such ordinance shall include minimum contract standards and other measures to protect the quality and reliability of public services. A City department shall be provided with an opportunity and resources to develop efficiency and effectiveness improvements in their operations as part of the department's proposal. The City Manager shall establish the Managed Competition Independent Review Board to advise the City Manager whether a City department's proposal or an independent contractor's proposal will provide the services to the City most economically and efficiently while maintaining service quality and protecting the public interest. The City Manager will appoint seven (7) members to the Board. Four (4) shall be private citizens whose appointments shall be subject to City Council confirmation. Each shall have professional experience in one or more of the following areas: finance, law, public administration, business management or the service areas under consideration by the City Manager. Three (3) shall be City staff including a City Manager staff designee, a City Council staff designee and the City Auditor and Comptroller or staff designee. Such appointees shall not have any personal or financial interests which would create conflict of interests with the duties of a Board member. Members of the Board shall be prohibited from entering into a contract or accepting employment from an organization which secures a City contract through the managed competition process for the duration of the contract. The City Council shall have the authority to accept or reject in its entirety any proposed agreement with an independent contractor submitted by the City Manager upon recommendation of the Managed Competition Independent Review Board. The City Manager shall have the sole responsibility for administering and monitoring any agreements with contractors. The City Manager shall be required to produce annual performance audits for contracted services, the cost of which must be accounted for and considered during the bidding process. In addition, the City Manager shall seek an independent audit every five (5) years to evaluate the City's experience and performance audits. During the period of time that the City operates under the Strong Mayor form of governance pursuant to Article XV, the reference herein to City Manager shall be deemed to refer to the Mayor."

(d) Police officers, firefighters and lifeguards who participate in the Safety Retirement System shall not be subject to Managed Competition.

Category C, Recommendation #10: City Attorney (This has been recommended by the Subcommittee (in an earlier draft form), but not yet by the full Committee, so this is tentative.)

Summary of Recommendation

Amend Section 40 (City Attorney) to create professional qualifications for this Office, define the civil client as the municipal corporation of the City of San Diego, clarify authority over the control and settlement of litigation, and establish a process allowing a City entity to retain outside legal counsel (at the entity's own expense) when the City Attorney's Office may not provide legal advice due to an ethical or financial conflict of interest.

Recommended Charter Language

Section 40: City Attorney

(a) Qualifications and Election. The City Attorney must be qualified to practice in all the courts of the state. The City Attorney shall be elected for a term of four (4) years in the manner prescribed by Section 10 of this Charter.

(b) Term Limit. Notwithstanding any other provision of this Charter and commencing with elections held in 1992, no person shall serve more than two (2) consecutive four-year terms as City Attorney. If for any reason a person serves a partial term as City Attorney in excess of two (2) years, that partial term shall be considered a full term for purposes of this term limit provision. Persons holding the office of City Attorney prior to the November 1992 election shall not have prior or current terms be counted for the purpose of applying this term limit provision to future elections.

(c) Chief Legal Adviser. The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the Ethics Commission, which shall have its own legal counsel independent of the City Attorney.

(d) Prohibition on Outside Employment. The attorney and his or her deputies shall devote their full time to the duties of the office and shall not engage in private legal practice during the term for which they are employed by the City, except to carry to a conclusion any matters for which they have been retained prior to taking office.

(e) Employment of Assistants. The City Attorney shall appoint such deputies, assistants, and employees to serve him or her, as may be provided by ordinance of the Council, but all appointments of subordinates other than deputies and assistants shall be subject to the Civil Service provisions of this Charter.

(f) Powers and Duties. It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department; to give advice in writing when so requested, to the Mayor, the Council, its Committees, the Manager, the Commissions, or Directors of any department, but all such advice shall be in writing with the citation of authorities in support of the conclusions expressed in said written opinions; to prosecute or defend, as the case may be, all suits or cases to which the City may be a party; to

prosecute for all offenses against the ordinances of the City and for such offenses against the laws of the State as may be required of the City Attorney by law; to prepare in writing all ordinances, resolutions, contracts, bonds, or other instruments in which the City is concerned, and to endorse on each approval of the form or correctness thereof; to preserve in the City Attorney's office a docket of all cases in which the City is interested in any of the courts and keep a record of all proceedings of said cases; to preserve in the City Attorney's office copies of all written opinions he or she has furnished to the Council, Manager, Commission, or any officer. Such docket, copies and papers shall be the property of the City, and the City Attorney shall, on retiring from office, deliver the same, together with all books, accounts, vouchers, and necessary information, to his or her successor in office.

(g) Legal Documents. The City Attorney shall have charge and custody of all legal papers, books, and dockets belonging to the City pertaining to his or her office, and, upon a receipt therefor, may demand and receive from any officer of the City any book, paper, documents, or evidence necessary to be used in any suit, or required for the purpose of the office.

(h) Control of Litigation.

The civil client of the City Attorney is the municipal corporation, the City of San Diego and the officers through which it acts. The City Attorney shall defend the City in litigation, as well as its officers and employees as provided by ordinance. The City Attorney may initiate civil litigation on behalf of the City or the People of the State of California, and shall initiate civil litigation on behalf of the City only when requested to do so by the authority having control over the litigation as set forth below. The City Attorney shall manage all litigation of the City, subject to client direction in accordance with this section, and subject to the City Attorney's duty to act in the best interests of the City and to conform to professional and ethical obligations. In the course of litigation, client decisions, including a decision to initiate litigation, shall be made by the Mayor or the Council in accordance with this section. However, the decision to settle litigation shall be made in accordance with subsection (i) of Charter section 40.

(1) **Council.** The Council shall make client decisions in litigation involving matters over which the Charter gives the Council responsibility.

(2) **Mayor.** The Mayor shall make client decisions in litigation involving matters over which the Charter gives the Mayor responsibility.

(3) **Authority to Request the Courts to Restrain or Compel Action by City Officials.** The City Attorney shall apply, upon order of the client, in the name of the City, to a court of competent jurisdiction for an order or injunction to restrain the misapplication of funds of the City or the abuse of corporate powers, or the execution or performance of any contract made in behalf of the City which may be in contravention of the law or ordinances governing it, or which was procured by fraud or corruption. The City Attorney shall apply, upon order of the client, to a court of competent jurisdiction for a writ of mandamus to compel the performance of duties of any officer or commission which fails to perform any duty expressly enjoined by law or ordinance.

(4) **Interpretation of Section.** The City Attorney shall have the authority to make the determination regarding who is authorized to make client decisions on behalf of the City in accordance with the principles of this section and accepted principles of representation of municipal entities.

(i) Settlement of Litigation.

(1) Settlements Involving Only Money Damages. The Mayor and Council shall establish by ordinance a process for the approval or rejection of settlement involving money damages.

(2) Other Settlements. The Council shall have the authority to approve or reject settlement of litigation that does not involve only the payment or receipt of money, subject to veto of the Mayor, and Council override of the Mayor's veto, as provided under this Charter.

(j) Other Duties. The City Attorney shall perform such other duties of a legal nature as the Council may by ordinance require or as are provided by the Constitution and general laws of the State.

(k) Employment of Other Legal Counsel.

(1) The Council shall have authority to employ additional competent technical legal attorneys to investigate or prosecute matters connected with the departments of the City when such assistance or advice is necessary in connection therewith. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes and shall charge such additional legal service against the appropriation of the respective Departments.

(2) Any elected officer, department head, board or commission may engage counsel other than the City Attorney for legal advice regarding a particular matter where the elected officer, department head, board or commission has reason to believe that the City Attorney may have a prohibited financial conflict of interest under California law or a prohibited ethical conflict of interest under the California Rules of Professional Conduct with regard to the matter. The Mayor and Council shall provide by ordinance a process for determining whether the retention of outside legal counsel is justified. The cost of said process, and the cost for any of the services of outside legal counsel, shall be charged against the appropriation of the entity requesting such counsel. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes.

(l) Salary. The salary of the City Attorney shall be fixed by the Council and set forth in the annual appropriation ordinance, provided that the salary of the City Attorney may not be decreased during a term of office, but in no event shall said salary be less than \$15,000.00 per year. In the event that another section of this Charter authorizes the Salary Setting Commission to establish salaries for all elected officials, the salary of the City Attorney shall be fixed in the manner prescribed by that section.

(m) Vacancy. In the event of a vacancy occurring in the office of the City Attorney by reason of any cause, the Council shall have authority to fill such vacancy, which said authority shall be exercised within thirty (30) days after the vacancy occurs. Any person appointed to fill such vacancy shall hold office until the next regular municipal election, at which time a person shall be elected to serve the unexpired term. Said appointee shall remain in office until a successor is elected and qualified.

Recommended Language for Official Ballot

Section 40: City Attorney

(a) Qualifications and Election. The City Attorney must be qualified to practice in all the courts of the state. ~~At the municipal primary and general election in 1977, a City Attorney shall be elected by the people for a term of seven (7) years. A~~ The City Attorney shall thereafter be elected for a term of four (4) years in the manner prescribed by Section 10 of this Charter.

(b) Term Limit. Notwithstanding any other provision of this Charter and commencing with elections held in 1992, no person shall serve more than two (2) consecutive four-year terms as City Attorney. If for any reason a person serves a partial term as City Attorney in excess of two (2) years, that partial term shall be considered a full term for purposes of this term limit provision. Persons holding the office of City Attorney prior to the November 1992 election shall not have prior or current terms be counted for the purpose of applying this term limit provision to future elections.

(c) Chief Legal Adviser. The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the Ethics Commission, which shall have its own legal counsel independent of the City Attorney.

(d) Prohibition on Outside Employment. The attorney and his or her deputies shall devote their full time to the duties of the office and shall not engage in private legal practice during the term for which they are employed by the City, except to carry to a conclusion any matters for which they have been retained prior to taking office.

(e) Employment of Assistants. The City Attorney shall appoint such deputies, assistants, and employees to serve him or her, as may be provided by ordinance of the Council, but all appointments of subordinates other than deputies and assistants shall be subject to the Civil Service provisions of this Charter.

(f) Powers and Duties. It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department; to give advice in writing when so requested, to ~~the Mayor,~~ the Council, its Committees, the Manager, the Commissions, or Directors of any department, but all such advice shall be in writing with the citation of authorities in support of the conclusions expressed in said written opinions; to prosecute or defend, as the case may be, all suits or cases to which the City may be a party; to prosecute for all offenses against the ordinances of the City and for such offenses against the laws of the State as may be required of the City Attorney by law; to prepare in writing all ordinances, resolutions, contracts, bonds, or other instruments in which the City is concerned, and to endorse on each approval of the form or correctness thereof; to preserve in the City Attorney's office a docket of all cases in which the City is interested in any of the courts and keep a record of all proceedings of said cases; to preserve in the City Attorney's office copies of all written opinions he or she has furnished to the Council, Manager, Commission, or any officer. Such docket, copies and papers shall be the property of the City, and the City Attorney shall, on retiring from office, deliver the same, together with all books, accounts, vouchers, and necessary information, to his or her successor in office.

(g) Legal Documents. The City Attorney shall have charge and custody of all legal papers, books, and dockets belonging to the City pertaining to his or her office, and, upon a receipt therefor, may demand and receive from any officer of the City any book, paper, documents, or evidence necessary to be used in any suit, or required for the purpose of the office.

(h) Control of Litigation.

The civil client of the City Attorney is the municipal corporation, the City of San Diego and the officers through which it acts. The City Attorney shall defend the City in litigation, as well as its officers and employees as provided by ordinance. The City Attorney may initiate civil litigation on behalf of the City or the People of the State of California, and shall initiate civil litigation on behalf of the City only when requested to do so by the authority having control over the litigation as set forth below. The City Attorney shall manage all litigation of the City, subject to client direction in accordance with this section, and subject to the City Attorney's duty to act in the best interests of the City and to conform to professional and ethical obligations. In the course of litigation, client decisions, including a decision to initiate litigation, shall be made by the Mayor or the Council in accordance with this section. However, the decision to settle litigation shall be made in accordance with subsection (i) of Charter section 40.

(1) **Council.** The Council shall make client decisions in litigation involving matters over which the Charter gives the Council responsibility.

(2) **Mayor.** The Mayor shall make client decisions in litigation involving matters over which the Charter gives the Mayor responsibility.

(3) **Authority to Request the Courts to Restrain or Compel Action by City Officials.** The City Attorney shall apply, upon order of the ~~Council~~client, in the name of the City, to a court of competent jurisdiction for an order or injunction to restrain the misapplication of funds of the City or the abuse of corporate powers, or the execution or performance of any contract made in behalf of the City which may be in contravention of the law or ordinances governing it, or which was procured by fraud or corruption. The City Attorney shall apply, upon order of the ~~Council~~client, to a court of competent jurisdiction for a writ of mandamus to compel the performance of duties of any officer or commission which fails to perform any duty expressly enjoined by law or ordinance.

(4) **Interpretation of Section.** The City Attorney shall have the authority to make the determination regarding who is authorized to make client decisions on behalf of the City in accordance with the principles of this section and accepted principles of representation of municipal entities.

(i) Settlement of Litigation.

(1) **Settlements Involving Only Money Damages.** The Mayor and Council shall establish by ordinance a process for the approval or rejection of settlement involving money damages.

(2) **Other Settlements.** The Council shall have the authority to approve or reject settlement of litigation that does not involve only the payment or receipt of money, subject to veto of the Mayor, and Council override of the Mayor's veto, as provided under this Charter.

(j) Other Duties. The City Attorney shall perform such other duties of a legal nature as the Council may by ordinance require or as are provided by the Constitution and general laws of the State.

(k) Employment of Other Legal Counsel.

(1) The Council shall have authority to employ additional competent technical legal attorneys to investigate or prosecute matters connected with the departments of the City when such assistance or advice is necessary in connection therewith. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes and shall charge such additional legal service against the appropriation of the respective Departments.

(2) Any elected officer, department head, board or commission may engage counsel other than the City Attorney for legal advice regarding a particular matter where the elected officer, department head, board or commission has reason to believe that the City Attorney may have a prohibited financial conflict of interest under California law or a prohibited ethical conflict of interest under the California Rules of Professional Conduct with regard to the matter. The Mayor and Council shall provide by ordinance a process for determining whether the retention of outside legal counsel is justified. The cost of said process, and the cost for any of the services of outside legal counsel, shall be charged against the appropriation of the entity requesting such counsel. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes.

(l) Salary. The salary of the City Attorney shall be fixed by the Council and set forth in the annual appropriation ordinance, provided that the salary of the City Attorney may not be decreased during a term of office, but in no event shall said salary be less than \$15,000.00 per year. In the event that another section of this Charter authorizes the Salary Setting Commission to establish salaries for all elected officials, the salary of the City Attorney shall be fixed in the manner prescribed by that section.

(m) Vacancy. In the event of a vacancy occurring in the office of the City Attorney by reason of any cause, the Council shall have authority to fill such vacancy, which said authority shall be exercised within thirty (30) days after the vacancy occurs. Any person appointed to fill such vacancy shall hold office until the next regular municipal election, at which time a person shall be elected to serve the unexpired term. Said appointee shall remain in office until a successor is elected and qualified.

Item II, Recommendation #11: Salary Setting

Summary of Recommendation

Repeal Section 24.1 (Mayor's Salary) and amend Section 12.1 (Councilmanic Salaries), Section 40 (City Attorney) and Section 41.1 (Salary Setting Commission) to alter the salary setting process for all elected officials. Henceforth, the Salary Setting Commission shall include individuals with particular expertise, authorized to examine all appropriate factors and establish the salaries of the Mayor, City Attorney and Council. The Council must adopt the Salary Setting Commission's recommendations for salaries, and the Mayor may not veto them. The public will retain its referenda authority over the ordinance enacting these salaries.

Recommended Charter Language

Section 12.1: Salaries of Elected Officials

On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Mayor and Council the enactment of an ordinance establishing or modifying the salary of all elected City officials for the period commencing July 1 of that even year and ending two years thereafter. The Council shall adopt those salaries by ordinance. The ordinance adopting the salaries of elected officials shall be separate from the City's Salary Ordinance and shall not be subject to any veto provision of Article XV. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election. Until an ordinance establishing or modifying the salaries of elected City officials takes effect, the officials shall continue to receive the same annual salary received previously. This section shall not be subject to the provisions of section 11.1.

[REPEAL SECTION 24.1 (MAYOR'S SALARY) IN ITS ENTIRETY.]

Section 40: City Attorney

###

The salary of the City Attorney shall be fixed as provided in section 12.1 and set forth in the annual appropriation ordinance, except that the salary of the City Attorney may not be decreased during a term of office, and in no event shall said salary be less than \$15,000.00 per year.

###

Section 41.1: Salary Setting Commission

There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The Commission shall consist of the following persons: (1) Three public members, at least one of whom has expertise in the area of compensation, including but not limited to an economist, market researcher, or personnel manager. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, have been a candidate for elective public office, or have been a lobbyist, as defined by the Political Reform Act of 1974. (2) Two members who have experience in the business community. (3) Two members, each of whom is an officer or member of a labor organization. All members shall be residents of this City. The Civil Service Commission shall strive insofar as is practicable to provide a balanced representation

of the geographic, gender, racial, and ethnic diversity of the City in appointing commission members. The Salary Setting Commission shall recommend to the Council the establishment and modification of salaries for all elected City officials as provided in section 12.1 of this Charter. The City Manager shall provide from existing resources the staff and services necessary to enable the Commission to perform its duties. The Commission shall consider in establishing or modifying the annual salary for elected officials the following factors, including but not limited to:

- (1) The elected official's responsibility and scope of authority, and the amount of time directly or indirectly related to the performance of the duties, functions, and services of the office.
- (2) The annual salary of other elected and appointed municipal officials with comparable responsibility in this and other states.
- (3) The benefits package accompanying the City office.
- (4) Comparable data including the Consumer Price index and rates of inflation.
- (5) The relative cost of living in the City and the establishment of salaries adequate to attract sufficiently qualified candidates.

Recommended Language for Official Ballot

Section 12.1: ~~Councilmanic~~ Salaries of Elected Officials

On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Mayor and Council the enactment of an ordinance establishing or modifying the salary of ~~members of the Council~~ all elected City officials for the period commencing July 1 of that even year and ending two years thereafter. The Council ~~may~~shall adopt ~~those~~ salaries by ordinance ~~as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount.~~ The ordinance adopting the salaries of elected officials shall be separate from the City's Salary Ordinance and shall not be subject to any veto provision of Article XV. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election. Until an ordinance establishing or modifying the salaries of elected City officials takes effect, the officials shall continue to receive the same annual salary received previously. This section shall not be subject to the provisions of section 11.1.

Section 24.1: ~~Mayor's~~ Salary

~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the Mayor's salary for the period commencing July 1 of that even year and ending two years thereafter. The Council shall adopt the salary by ordinance, as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election.~~

[SECTION 24.1 REPEALED IN ITS ENTIRETY.]

Section 40: City Attorney

###

The salary of the City Attorney shall be fixed as provided in section 12.1 ~~by the Council~~ and set forth in the annual appropriation ordinance, provided except that the salary of the City Attorney may not be decreased during a term of office, ~~but~~and in no event shall said salary be less than \$15,000.00 per year.

###

Section 41.1: Salary Setting Commission

There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The Commission shall consist of the following persons: (1) Three public members, at least one of whom has expertise in the area of compensation, including but not limited to an economist, market researcher, or personnel manager. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, have been a candidate for elective public office, or have been a lobbyist, as defined by the Political Reform Act of 1974. (2) Two members who have experience in the business community. (3) Two members, each of whom is an officer or member of a labor organization. All members shall be residents of this City. The Civil Service Commission shall strive insofar as is practicable to provide a balanced representation

of the geographic, gender, racial, and ethnic diversity of the City in appointing commission members.~~The first members shall be appointed for a term commencing January 1, 1974. Initially, the Commissioners shall be appointed in a manner so that three are appointed for two-year terms and four are appointed for four-year terms. The Salary Setting Commission shall recommend to the Council the establishment and modificationenactment of an ordinance establishing salaries for all elected City officials—the Mayor and Council as provided in section 12.1 of~~by this Charter. The City Manager shall provide from existing resources the staff and services~~Council shall provide the funds necessary to enable the Commission to perform its duties. The Commission shall consider in establishing or modifying the annual salary for elected officials the following factors, including but not limited to:~~

- (1) The elected official's responsibility and scope of authority, and the amount of time directly or indirectly related to the performance of the duties, functions, and services of the office.
- (2) The annual salary of other elected and appointed municipal officials with comparable responsibility in this and other states.
- (3) The benefits package accompanying the City office.
- (4) Comparable data including the Consumer Price index and rates of inflation.
- (5) The relative cost of living in the City and the establishment of salaries adequate to attract sufficiently qualified candidates.~~—The Civil Service Commission in its appointments shall take into consideration sex, race and geographical area so that the membership of such Commission shall reflect the entire community.~~

Item II, Recommendation #12: Appointments to Outside Organizations

Summary of Recommendation

Amend Section 265 (The Mayor) to allow the Mayor to submit nominees for consideration when controlling law vests the power to appoint City representatives to boards, commissions, committees and governmental agencies in the City Council or a City Official other than the Mayor.

Recommended Charter Language

Section 265: The Mayor

###

(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have the following additional rights, powers, and duties:

###

(13) Sole authority to appoint City representatives to boards, commissions, committees and governmental agencies, unless controlling law vests the power of appointment with the City Council or a City Official other than the Mayor. In such cases the Mayor shall have the right to submit nominees for consideration.

Recommended Language for Official Ballot

Section 265: The Mayor

###

(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have the following additional rights, powers, and duties:

###

(13) Sole authority to appoint City representatives to boards, commissions, committees and governmental agencies, unless controlling law vests the power of appointment with the City Council or a City Official other than the Mayor. In such cases the Mayor shall have the right to submit nominees for consideration.

Item II, Recommendation #13: Personnel Director

Summary of Recommendation

Amend Section 265 (The Mayor) to allow the Mayor to appoint the Personnel Director, subject to Council confirmation, and to dismiss the Personnel Director without recourse.

Recommended Charter Language

Section 265: The Mayor

###

(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have following additional rights, powers, and duties:

###

(16) Notwithstanding contrary language in Charter sections 37 or 116, sole authority to appoint the Personnel Director, subject to Council confirmation.

(17) Sole authority to dismiss the Personnel Director without recourse.

Recommended Language for Official Ballot

Section 265: The Mayor

###

(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have following additional rights, powers, and duties:

###

(16) Notwithstanding contrary language in Charter sections 37 or 116, sole authority to appoint the Personnel Director, subject to Council confirmation.

(17) Sole authority to dismiss the Personnel Director without recourse.

Item II, Recommendation #14: Mayor as Redevelopment Agency Executive Director (This has been recommended by the Subcommittee, but not yet by the full Committee, so this is tentative.)

Summary of Recommendation

Amends Section 265 (The Mayor) to authorize the Mayor to act as the Chief Executive Officer of any organization established by federal or state law for which the City Council acts as the governing or legislative body. In this capacity, the Mayor will supervise the administrative affairs of these organizations, and hold the same administrative and procedural power and authority that the Mayor has in conducting City affairs, including the power of veto. This would institutionalize the Mayor's present position as Executive Director of the Redevelopment Agency.

Recommended Charter Language

Section 265: The Mayor

###

(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have following additional rights, powers, and duties:

###

(18) The Mayor shall serve or be designated as the chief executive officer of any organization established by federal or state law for which the City Council acts as its governing or legislative body as of the effective date of the adoption of this section by the voters of the City of San Diego. In that capacity, the Mayor shall supervise the administrative affairs of such organization, and shall have the same administrative and procedural power and authority over the affairs of such organization and governing or legislative body as the Mayor has in the conduct of the affairs of the City of San Diego, including the power of veto.

Recommended Language for Official Ballot

Section 265: The Mayor

###

(b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have following additional rights, powers, and duties:

###

(18) The Mayor shall serve or be designated as the chief executive officer of any organization established by federal or state law for which the City Council acts as its governing or legislative body as of the effective date of the adoption of this section by the voters of the City of San Diego. In that capacity, the Mayor shall supervise the administrative affairs of such organization, and shall have the same administrative and procedural power and authority over the affairs of such organization and governing or legislative body as the Mayor has in the conduct of the affairs of the City of San Diego, including the power of veto.

Item II, Recommendation #15: Balanced Budget (This has been recommended by the Subcommittee, but not yet by the full Committee, so this is tentative.)

Summary of Recommendation

Adds a new Section 71.1 (Balanced Budget) to require that the City adopt a balanced budget and make mid-year course corrections to ensure that it is being implemented. At the end of the year, the City shall charge any deficit against the next year's operating budget. The City may not underfund its Capital program to create the spurious appearance of a balanced budget.

Recommended Charter Language

Section 71.1: Balanced Budget

The operations of the City shall be such that, at the end of the fiscal year, the results thereof shall not show a deficit when reported in accordance with generally accepted accounting principles.

If the City Manager determines during the course of any fiscal year that the City will end the year with a deficit, then the City Manager shall recommend a reduction of the expenditures of City departments by appropriate amounts sufficient to prevent the City from showing said deficit. If the Council does not approve the City Manager's recommendations, the Council must adopt other reductions to prevent the City from showing said deficit.

In the event that the results of the City's operations during the preceding fiscal year have not comported with the balanced budget requirements established by this section, the City Manager shall present to the City Council for approval a financial plan that includes provision for the repayment of any deficit incurred by the City during the preceding fiscal year.

Both operating and capital budgets shall be a part of the City's financial process. The City Manager shall prepare a preliminary Capital Budget which shall consist of a financial plan detailing estimates of capital expenditures for the fiscal year. This plan shall include cash flow estimates and proposed sources of funding for each project included. The City Manager shall prepare a capital program status report which includes each project in the capital budget for the current fiscal year. The capital program status report shall indicate for every project the appropriation for the current fiscal year, and the expenditures upon said project to date.

Recommended Language for Official Ballot

Section 71.1: Balanced Budget

The operations of the City shall be such that, at the end of the fiscal year, the results thereof shall not show a deficit when reported in accordance with generally accepted accounting principles.

If the City Manager determines during the course of any fiscal year that the City will end the year with a deficit, then the City Manager shall recommend a reduction of the expenditures of City departments by appropriate amounts sufficient to prevent the City from showing said deficit. If the Council does not approve the City Manager's recommendations, the Council must adopt other reductions to prevent the City from showing said deficit.

In the event that the results of the City's operations during the preceding fiscal year have not comported with the balanced budget requirements established by this section, the City Manager shall present to the City Council for approval a financial plan that includes provision for the repayment of any deficit incurred by the City during the preceding fiscal year.

Both operating and capital budgets shall be a part of the City's financial process. The City Manager shall prepare a preliminary Capital Budget which shall consist of a financial plan detailing estimates of capital expenditures for the fiscal year. This plan shall include cash flow estimates and proposed sources of funding for each project included. The City Manager shall prepare a capital program status report which includes each project in the capital budget for the current fiscal year. The capital program status report shall indicate for every project the appropriation for the current fiscal year, and the expenditures upon said project to date.

LANGUAGE RECOMMENDED FOR ADDITION TO THE MUNICIPAL CODE

Category III, Recommendation #16: Audit Committee

The Audit Committee shall meet at least quarterly and shall have the following duties:

- (a) Review, discuss and monitor the City's annual audited financial statements and any periodic financial statements with the City Manager, the City Auditor and the outside auditors.
- (b) Based on its review and discussions with management and the outside auditors, recommend to the City Council whether the City's audited financial statements should be received by the City Council.
- (c) Monitor changes to the City's auditing and accounting principles and practices as suggested by the outside auditors or management.
- (d) Monitor the effectiveness of the City's internal controls disclosure controls and procedures in consultation with the City Manager, City Auditor and outside auditors.
- (e) Review, discuss and monitor with the City Manager and the outside auditors:
 - (1) Any material financial or non-financial arrangements that do not appear on the City's financial statements;
 - (2) Any transactions or courses of dealing with parties related to the City that are significant in size or involve terms or other aspects that differ from those that would likely be negotiated with independent parties, and that are relevant to an understanding of the City's financial statements;
 - (3) Material financial risks that are designated as such by management or the outside auditors.
- (f) Establish procedures for the receipt, retention and treatment of complaints received by the Audit Committee regarding misuse of City assets; and the confidential, anonymous submission by City's employees or members of the public of concerns regarding such misuse.
- (g) Discuss and with the outside auditors annually or more often if necessary, a report by the outside auditors describing (i) the outside auditors' internal quality-control procedures, and (ii) any material issues raised by the most recent internal quality control review or peer review of the outside auditors, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more audits carried out by the outside auditors, and the steps taken to address those issues.
- (h) Review the report by the outside auditors concerning: (i) all critical accounting policies and practices to be used; (ii) any deviation from GAAP in the City's financial statements; and (iii) any other material written communications between the outside auditors and the City's management.
- (i) Review, discuss and monitor with the outside auditors annually or more often if deemed necessary by the Audit Committee, all relationships the outside auditors have with the City in order to evaluate the outside auditors' continued independence, and receive from the outside auditors on an annual basis a written statement regarding the auditors' independence.

The Audit Committee shall have no authority or responsibility to prepare or direct the preparation of the City's financial statements.

Item III, Recommendation #17: City Auditor

Pursuant to Charter Section 39.2, in addition to the duties enumerated therein, the City Auditor shall have the following powers and duties:

- (a) The Audit Plan required in Charter Section 39.2 shall be based on a formal Risk Assessment of City operations. The Risk Assessment shall be performed in accordance with the Professional Practice of Internal Auditing. Those City activities, organizational units, or functional processes that have the highest level of inherent risk, as identified in the Risk Assessment, shall be included in the annual Audit Plan.
- (b) On or before September 1 of every year, the City Auditor shall conduct an annual audit of the City's internal financial controls, and post audits of the fiscal transactions and accounts kept by or for the City and its departments, offices and agencies. Such audits shall include but not be limited to the evaluation of key controls over financial reporting, examination and analysis of fiscal procedures and the examination, checking and verification of accounts and expenditures. The audits shall be conducted in accordance with Generally Accepted Government Auditing Standards in conjunction with the City Standards for the Professional Practice of City Auditing, and shall include tests of the accounting records and other auditing procedures as the City Auditor may deem necessary under the circumstances. The audits shall include the issuance of suitable reports of examination in order to assure that the Audit Committee, Council, City Manager, and the public will be informed as to the adequacy of the City's internal controls over financial reporting.
- (c) Conduct performance audits, as appropriate, of any City department, office or agency. A "performance audit" means a post audit which determines with regard to the purpose, functions and duties of the audited agency all of the following:
 - (1) Whether the audited department, office or agency, is managing or utilizing its resources, including public funds, personnel, property, equipment and space in an economical and efficient manner.
 - (2) Causes of inefficiencies or uneconomical practices, including inadequacies in information management systems, internal and administrative procedures, organizational structure, use of resources, allocation of personnel, purchasing policies and equipment.
 - (3) Whether the purposes and/or functions of the department or agency are being satisfactorily achieved.
 - (4) Whether objectives established by the City Manager, Council or other authorizing body are being met.
 - (5) Whether audit recommendations will improve efficiency and effectiveness.
- (d) Conduct special audits and investigations. "Special audits" and "investigations" mean assignments of limited scope, intended to determine:
 - (1) The accuracy of information provided to the City Manager, Council, Audit Committee or public.
 - (2) The costs and consequences of recommendations made to the Council.
 - (3) The validity of accusations of material fraud, waste or abuse reported through the City's confidential hotline and other sources.
 - (4) Other information concerning the performance of City Departments, Offices or Agencies as requested by the City Manager or Audit Committee.

- (e) Prepare and submit to the Audit Committee, at least quarterly, a written report of the City Auditor's activities and findings, together with any recommendations to improve the administration of the City;
- (f) Perform other auditing functions, consistent with other provisions of the Charter, and prepare and submit such other reports, as may be requested by the City Manager, City Council or Audit Committee such as but not limited to:
 - (1) Assessing the compliance of City departments, agencies and vendors with appropriate City, State and Federal policies, procedures, laws, regulations, and contracts.
 - (2) Evaluating whether City assets are properly accounted for and safeguarded from losses.
 - (3) Reviewing the City's information technology systems to ensure electronic data is accurately processed and adequately safeguarded.

Item III, Recommendation #18: Balanced Budget (This is being considered by the Subcommittee, but not yet acted upon by the full Committee, so this is tentative.)

The City shall not use the funds that are part of the Capital Budget to meet the revenue requirements of its operating budget. To ensure that the shifting of funds is not employed to secure the appearance of a balanced budget, the City shall adopt a financial plan that includes both the Capital Budget and the operating budget. If the City fails to meet the requirements of the Capital Budget as defined by the financial plan, the City must deduct funds to replace Capital revenues from its operating budget for the next fiscal year.

Item III. Recommendation #19: Retention of Outside Legal Counsel (This has been recommended by the Subcommittee, but not yet by the full Committee, so this is tentative.)

Employment of Outside Legal Counsel.

(1) The Ethics Commission shall be authorized to employ outside legal counsel, as provided by section 41(d) of the Charter. The City may otherwise contract with outside legal counsel to assist the City Attorney in the discharge of his or her duties under the Charter upon written approval of the Council and the City Attorney, and consistent with budgetary appropriations.

(2) Any elected officer, department head, board or commission may engage counsel other than the City Attorney for legal advice regarding a particular matter where the elected officer, department head, board or commission has reason to believe that the City Attorney may have a prohibited financial conflict of interest under California law or a prohibited ethical conflict of interest under the California Rules of Professional Conduct with regard to the matter, subject to the following limitations and conditions:

(A) The elected officer, department head, board or commission shall first present a written request to the City Attorney for outside counsel. The written request shall specify the particular matter for which the elected officer, department head, board or commission seeks the services of outside counsel, a description of the requested scope of services, and the potential conflict of interest that is the basis for the request. Within five working days after receiving the written request for outside counsel, the City Attorney shall respond in writing to the elected officer, department head, board or commission either consenting or not consenting to the provision of outside counsel. If the City Attorney does not consent to the provision of outside counsel, the City Attorney shall state in the written response why he or she believes that there is no conflict of interest regarding the particular matter.

(B) If the elected officer, department head, board or commission continues to believe there are adequate grounds for outside counsel despite the City Attorney's response that there is no conflict of interest, the elected officer, department head, board or commission may, within thirty days after receiving the City Attorney's response, refer the issue of whether the City Attorney has a prohibited conflict of interest regarding a particular matter to a retired judge or justice of the state courts of California for resolution. If the elected officer, department head, board or commission and City Attorney cannot agree on a retired judge to hear the matter, the retired judge shall be selected at random by an alternative dispute resolution provider. If the matter is referred to a retired judge, the elected officer, department head, board or commission, subject to the budgetary and fiscal provisions of the Charter, shall be entitled to retain outside counsel to represent it solely on the issue of whether the City Attorney has a conflict of interest regarding the particular matter.

(C) In deciding whether the City Attorney has a conflict of interest regarding a particular matter, the retired judge shall be bound by and apply the applicable substantive law and Rules of Professional Conduct as if he or she were a court of law. To the extent practicable, the retired judge shall hear the matter within 15 days after its assignment to the retired judge, and within 15 days after the hearing, shall issue a written opinion stating the basis for the decision. The retired judge, but not the City Attorney or elected officer, department head, board or commission, shall have the power to subpoena witnesses and documents in this proceeding.

(D) The retired judge may request that the City Attorney secure written advice from the California Fair Political Practices Commission, the State Bar of California, or the California Attorney General on the question of whether the City

Attorney has a conflict of interest regarding the particular matter. Upon such a request by the retired judge, the City Attorney shall secure such written advice. The retired judge may consider, but is not bound by, written advice so secured. The decision of the retired judge shall be final for the limited purpose of determining whether or not the elected officer, department head, board or commission may retain outside counsel for the particular matter.

(E) If the retired judge decides that the City Attorney does not have a conflict of interest regarding the particular matter, the City Attorney shall continue to be the legal adviser to the elected officer, department head, board or commission for such matter. If the retired judge decides that the City Attorney has a conflict of interest regarding a particular matter, the elected officer, department head, board or commission shall be entitled to retain outside counsel for legal advice regarding the particular matter, and the City Attorney shall thereupon cease to advise the elected officer, department head, board or commission on such matter. Any such finding of a conflict of interest shall not affect the City Attorney's role as legal advisor to the elected officer, department head, board or commission on all other matters.

(F) If at any time after the retention of outside counsel, the City Attorney believes that there is no longer a conflict of interest, the City Attorney shall state in writing to the elected officer, department head, board or commission why he or she believes that there is no longer a conflict of interest. Within five working days after receiving the written statement from the City Attorney, the elected officer, department head, board or commission shall respond in writing, either agreeing or disagreeing that there is no longer a conflict of interest. If the elected officer, department head, board or commission agrees that there is no longer a conflict of interest regarding a particular matter, the elected officer, department head, board or commission shall cease employing outside counsel for legal advice regarding the matter, and the City Attorney shall serve as legal adviser to the elected officer, department head, board or commission regarding that matter. If the elected officer, department head, board or commission states in its written response that it believes the conflict of interest still exists, the City Attorney may, within ten working days after receiving the response of the elected officer, department head, board or commission, elect to refer the issue of whether the conflict of interest regarding the particular matter continues to exist to the same retired judge who originally heard the matter, if available. The same procedures as established herein shall apply thereafter.

(G) In selecting outside counsel for any purpose described in subsection (f) of Charter section 40, the elected officer, department head, board or commission shall give preference to engaging the services of a City attorney's office, a County counsel's office or other public entity law office with an expertise regarding the subject-matter jurisdiction of the elected officer, department head, board or commission. If the elected officer, department head, board or commission concludes that private counsel is necessary, that attorney must be a member in good standing with the Bar of California who has at least five year's experience in the subject-matter jurisdiction of the elected officer, department head, board or commission. In selecting private counsel, the elected officer, department head, board or commission shall ensure that the attorney retained does not have a conflict of interest that would prevent him or her from providing suitable assistance. The cost of any of the services of outside legal counsel and of the alternative dispute resolution process described in this ordinance shall be charged against the appropriation of the entity requesting such counsel.

DRAFT—THIS DOCUMENT IS A TENTATIVE DRAFT AND HAS NOT BEEN APPROVED BY THE FULL COMMITTEE OR ANY OF ITS SUBCOMMITTEES!

APPENDIX THREE

SUPPORTING MATERIALS FOR CHARTER AND CODE CHANGES